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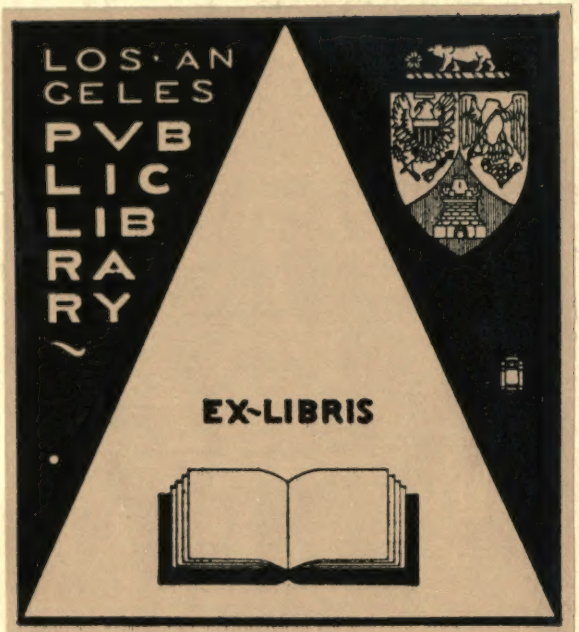

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STATE OF NEW YORK

MESSAGES FROM THE GOVERNORS

COMPRISING

Executive Communications to the Legislature and Other Papers Relating to Legislation from the Organization of the First Colonial Assembly in 1683 to and Including the Year 1906

WITH NOTES

EDITED BY CHARLES Z. LINCOLN

PUBLISHED BY AUTHORITY OF THE STATE

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VOLUME II

1777–1822

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PREFACE.

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Much history is contained in this volume. It opens with the organization of the State government in 1777, under the first Constitution, and ends with the passing of that instrument and the adoption of the second Constitution in 1822. It includes the Revolutionary War, the adoption of the Federal Constitution and the establishment of the national government, the second war with Great Britain, the initiation of the policy of internal improvements, and the beginning of canal construction. It embraces the administrations of Governors George Clinton, John Jay, Morgan Lewis, Daniel D. Tompkins, the first incumbency of De Witt Clinton, and the brief service of John Tayler as Acting-Governor in 1817 following the resignation of Governor Tompkins.

During this period Vermont separated from New York and became an independent State. Besides the information relating to this matter contained in executive messages, the volume includes several historical notes intended further to elucidate the issues involved in the controversy which resulted in the erection of a new State.

The volume also contains general historical notes relative to Federal affairs, including the establishment of the government and the national revenue system, the attitude of the State toward agriculture, relations between United States and France, between the Governor and the Council of Appointment, the Washington lottery, and numerous other shorter notes relative to subjects considered in the messages. Provisions peculiar to the first Constitution, some of which were not continued in subsequent Constitutions, are pointed out in the introductory note.

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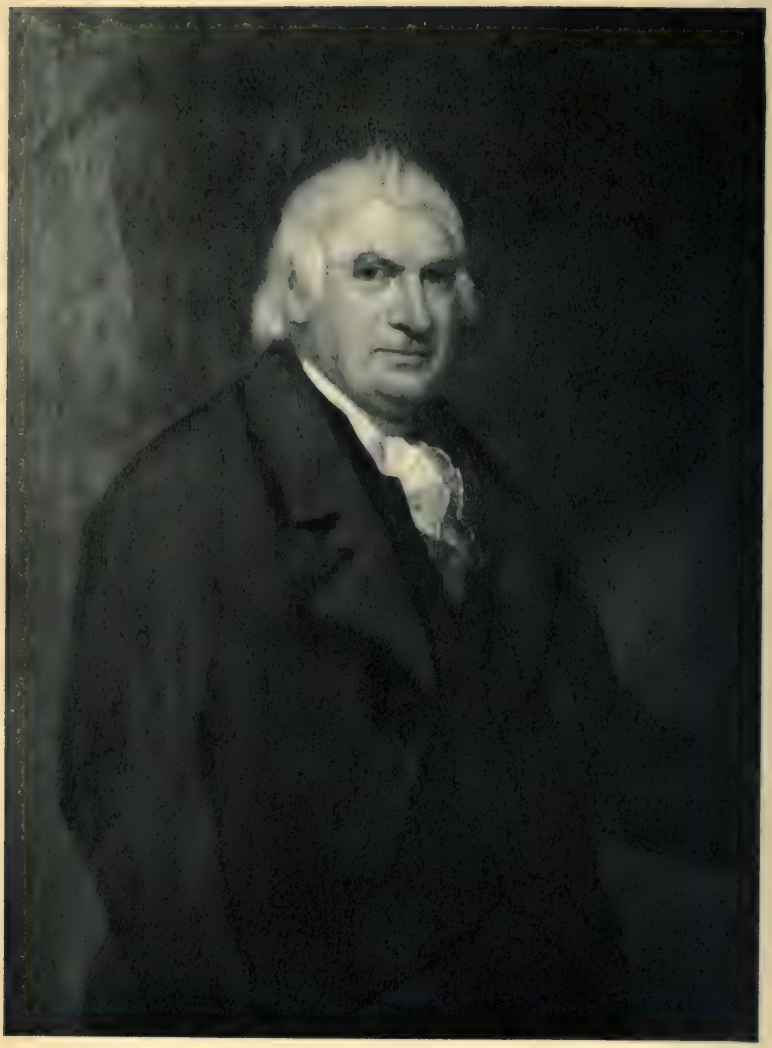

Geo: Clinton

THE STATE; FIRST CONSTITUTION, 1777.

Through the colonial period the government of New York was carried on under an unwritten Constitution. The term constitution, while it did not represent a written document, was well understood and frequently used, referring to the system of government with various administrative functions, including royal commissions and instructions, acts of Parliament, colonial statutes, judicial decisions, customs and forms of procedure by which the people exercised their rights and privileges under a hereditary monarchy, with a mixed representative system, partly appointive and partly elective. When by operation of the Declaration of Independence and the erection of a separate government, the colony became a free State, in which the people constituted the only sovereign power, a written statement of principles and forms of government was necessary, in order to define and protect the rights and privileges which the people had assumed, and were entitled to enjoy.

By the first State Constitution, adopted April 20, 1777, the Assembly was continued substantially as it had existed under the colonial system. A Senate elected by the people succeeded the Colonial Council composed of royal appointees. The Senate possessed substantially the powers which had been enjoyed by its predecessor, the Colonial Council, whose powers were similar in many respects to those possessed by the English House of Lords. The office of Governor was continued, and it would not be easy to discover any practical difference between his general powers and functions, and those possessed and exercised by his colonial predecessor. The difference, however, in the method of selection was fundamental, for instead of his being the

appointee and direct representative of the Crown, he became by election a direct representative of the people, and responsible to them for the conduct of his administration. Thus, as one of the sovereigns, he became for the time the executive head of the entire sovereignty. Under the colonial system the Governor's general powers, duties and functions were particularly prescribed in the commission and instructions issued to him upon his appointment, while under the State, his powers, duties and functions are prescribed either by the Constitution or by statute. The colonial legislative system was a close imitation of the English parliamentary system, the Governor representing the King, the Council the House of Lords, and the Assembly the House of Commons.

Among other commands laid upon the Governor by the first Constitution, it was his duty under article 19, to "inform the Legislature at every session, of the condition of the State, so far as may respect his department; and to recommend such matters to their consideration as shall appear to him to concern its good government, welfare and prosperity." The method by which the Governor should communicate information or recommendations to the Legislature was not prescribed, and it was quite natural that he should adopt the custom with which the people had long been familiar; and that his formal communication to the Legislature at the opening of a regular session should be by a speech in the presence of both Houses, and that afterward during the session, he should send special messages to the Legislature, or to either House, as occasion might seem to require. The custom of delivering a speech at the opening of the session of the Legislature was continued through the period covered by the first Constitution.

DIVISION OF EXECUTIVE POWER.

While by the first Constitution the Governor became the general executive head of the State, he was not vested with

supreme executive authority. Two pieces of machinery included in the first Constitution show how the power was divided, and a portion of it vested in other officers with equal authority, with the result that the Governor was only partially responsible for the proper exercise of executive power.

1. **Council of Appointment.**—The first Constitution contained the following general provision for the appointment of officers:

"XXIII. That all officers, other than those who, by this constitution, are directed to be otherwise appointed, shall be appointed in the manner following, to wit: The Assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a council, for the appointment of the said officers, of which the governor for the time being, or the lieutenant-governor, or the president of the senate (when they shall respectively administer the government), shall be president, and have a casting voice, but no other vote; and, with the advice and consent of the said council, shall appoint all of the said officers; and that a majority of the said council be a quorum: *And Further,* the said senators shall not be eligible to the said council for two years successively."

Nearly all state officers and a large number of local officers were chosen by the Council. At first the Governor exercised the exclusive right of nomination, and the Senate members of the Council were deemed to possess only the power of confirmation. After several years the Senate members of the Council began to claim the right of nomination, and this precipitated a controversy between the Governor and the Council, which culminated in the Constitutional Convention of 1801, which was charged with the express duty of construing the powers of the Council of Appointment, and which decided that each member of the Council possessed the right of nomination concurrently with the Governor. From that time, while the first Con-

stitution remained in force, the Council of Appointment was for practical purposes composed of five members—the Governor and four Senators—each of whom exercised an equal right of nomination.

2. **Council of Revision.**—The Constitution also contained the following provision:

"III. *And Whereas,* Laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisably passed: *Be it Ordained,* That the governor, for the time being, the chancellor and the judges of the supreme court, or any two of them, together with the governor, shall be, and hereby are, constituted a council to revise all bills about to be passed into laws by the legislature. And for that purpose shall assemble themselves, from time to time, when the legislature shall be convened; for which, nevertheless, they shall not receive any salary or consideration under any pretense whatever. And that all bills which have passed the senate and assembly shall, before they become laws, be presented to the said council for their revisal and consideration; and if upon such revision and consideration, it should appear improper to the said council, or a majority of them, that the said bill should become a law of this state, that they return the same, together with their objections thereto in writing, to the senate or house of assembly, in whichsoever the same shall have originated, who shall enter the objections set down by the council, at large, in their minutes, and proceed to reconsider the said bill. But if, after such reconsideration, two-thirds of the said senate or house of assembly shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two-thirds of the members present, shall be a law.

And in order to prevent any unnecessary delays,

Be it Further Ordained, That if any bill shall not be returned by the council, within ten days after it shall have been presented, the same shall be a law, unless the legislature shall, by their adjournment, render a return of the said bill within ten days impracticable, in which case, the

bill shall be returned on the first day of the meeting of the legislature, after the expiration of the said ten days."

This necessarily divided the veto power, and vested a portion of it in the chancellor and judges of the Supreme Court, who to that extent became a part of the executive branch of the government. The Council as a body determined the propriety and constitutionality of bills passed by the Legislature. It was customary, if any serious question arose in the consideration of a bill, to assign it to one of the judicial members of the Council for examination and the preparation of a written opinion or veto, if one was deemed necessary. The Governor could not act alone, and might be overruled by his colleagues.

Communications from the Council of Revision to the Legislature were essentially executive in their character, although relating solely to pending legislation. These communications were usually delivered by one of the judicial members of the Council, and were in the form of a resolution of the Council signed by the Governor. The bills approved by the Council were signed by the Governor substantially in the form used under subsequent constitutions, except that the approval was stated to be by order of the Council.

In the following pages communications from the Council, being in form from the Governor, are treated as if in fact from him, though they may not have represented his own opinion in all cases.

STATE GOVERNMENT ORGANIZED.

The Constitution was adopted April 20, 1777. On the same day the convention appointed a committee to prepare a plan of government. Afterward, and before the committee made its report, the convention concluded to appoint and elect certain officers for the purpose of establishing the new government, thus anticipating action which by the

letter of the Constitution was to be taken by the Legislature and the Council of Appointment. The convention chose Senators and Members of Assembly from the southern part of the State, which was in possession of the British, where elections could not be held under the Constitution, and also appointed certain state and local officers.

On the 8th of May the Convention adopted an Ordinance intended to provide machinery for carrying into effect the plan of government, naming officers who had been previously chosen by the convention, and prescribing regulations for the election of a Governor, Lieutenant-Governor, Senators and Members of Assembly.

The convention dissolved on the 13th of May, 1777, but immediately before its dissolution provided for a Council of Safety, and vested it with authority to carry on the government until the machinery provided by the Constitution could be put into operation, including the provisions for calling, holding and determining the result of elections authorized by the Ordinance.

The Ordinance had fixed the 1st of July as the date of the first meeting of the new Legislature. The Council of Safety accordingly issued writs of election on the 19th of May, directed to the sheriffs, requiring them to hold an election in time for this meeting of the Legislature. The elections were held in the month of June.

The Legislature did not meet at the time specified. The election returns were canvassed by the Council of Safety at Kingston on the 9th of July, and it was ascertained that George Clinton of Ulster had been chosen both Governor and Lieutenant-Governor. Being informed of this result, and requested to notify the Council which office he intended to accept, General Clinton replied by accepting the office of Governor, and resigning the office of Lieutenant-Governor. He took the oath of office as Governor July 30, 1777. The same day the Council of Safety proclaimed George Clinton "Governor-General and Commander-in-

Chief of all the militia, and Admiral of the Navy of the State, to whom the good people of this State are to pay due obedience according to the laws and constitution thereof."

July 16 the Council of Safety issued a proclamation convening the Legislature at Kingston on the 1st of August, but it did not meet at that time. August 6, Governor Clinton prorogued the Legislature to the 20th of August, and again on August 18, prorogued it to the 1st of September. Some of the members of each House met that day, but there was no quorum. A quorum appeared in the Senate on the 9th, and in the Assembly on the 10th.

1777. SEPTEMBER. STATE LEGISLATURE, FIRST SESSION.

GEORGE CLINTON, Governor.

September 10, 1777, in the afternoon, the Senate and Assembly, composing the first State Legislature, met in the Court House at Kingston, at which time Governor Clinton, in the presence of both Houses, delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND GENERAL ASSEMBLY.—The invasion of the state on the northern and western frontiers and the prospect of an attack by General Howe on the fortresses in the Highlands, obliged me to prorogue the legislature, and to deny myself the pleasure of seeing our free and happy constitution so early organized as I could have wished. This I was the more readily led to do, as well from the busy season of the year, as the confidence which the people justly reposed in the abilities and integrity of the gentlemen in whom the administration of government was then vested.

At present, by the kind interposition of Providence, the

cloud which hung over us seems in a great measure dispelled, and we have reason to expect a happy issue to this campaign.

The good conduct and bravery of the garrison of Fort Schuyler, seconded by the intrepidity of the late gallant General Herkimer and the militia of Tryon county, have entirely frustrated the designs of the enemy upon that part of the State; and obliged them, after the loss of a great part of their army, with the most of their baggage and artillery, disgracefully to abandon their enterprise.

The complete victory gained near Bennington by the valour of the militia of New Hampshire, Massachusetts Bay, and the north-eastern counties of this state, together with a small body of continental troops, we have reason to hope will check the progress of the enemy's arms, and secure our northern frontiers. I have, however, thought it proper in order to strengthen the army commanded by Major-General Gates, and to repress the incursions of the savages to the westward, to embody part of the militia and march them to the northward. I have also made a further draft, for the protection of the exposed inhabitants of the county of Westchester, and for the defence of the posts in the Highlands which I have the pleasure of assuring you, are in so respectable a state of defence, as to promise us security against any attack on that quarter. This, together with the several obstructions in Hudson's River, has probably induced General Howe to alter his original plan and to adopt another, which from the vigilance of his excellency General Washington, and the spirit of the southern militia, we have reason to hope will prove equally abortive.[1]

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[1] On the 19th of January, 1778, a joint committee, which had been appointed to consider the subject of the defence and obstructions of Hudson River, during the pending military operations, made a report containing numerous suggestions, including one especially applicable to the proposed obstruction of the river, and in which the committee said that "if a chain or boom is to

GENTLEMEN OF THE SENATE AND GENERAL ASSEMBLY.—As the security of every free state must under God depend upon its internal strength, I take this early opportunity to recommend to you, as a matter of the utmost importance, a speedy revision of our militia laws, which having been drawn at the commencement of this controversy, are, from an alteration in circumstances, become inapplicable to our present situation.[2]

The state of our finances likewise claims your serious attention.[3] The want of an organized government has hitherto rendered it impossible to make any provision for sinking the money, which the war obliged us to issue, and we have thus accumulated a debt, which if neglected, will not only prove burthensome to the state, but strike at the credit of our currency, which it behooves us so much to support.[4]

You will easily perceive, gentlemen, from the long suspension of law, and the disorder incident thereto, the neces-

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make a part of the water obstructions, all the iron works in the country, which have proper metal and conveniences for the purpose, should be immediately employed at making different parts of it, and that all necessary cables, cordage and anchors ought to be collected without delay." The report was agreed to. See also note 10.

[2] A general militia law, chap. 33, was passed April 3, 1778. On the last day of the session, June 30th, this act was amended by chap. 46.

[3] Chap. 17, passed March 28, 1778, imposed a tax of three pence per pound on real estate, and one penny half-penny per pound on personal estate, and established a scheme for the assessment and collection of taxes, which were to be paid to county treasurers, and by them to the State treasury. This bill was vetoed by the Council of Revision, but was passed over the veto. Chap. 40, passed June 29th, provided machinery for collecting debts due to the State. Chap. 26, passed April 1st, provided for the appointment of a State treasurer, and chap. 23, passed the same day, directed the treasurer to pay into the treasury of the United States $200,000, the amount levied on New York by the Continental Congress by a resolution adopted November 22, 1777, recommending that the States during the year 1778, raise five million dollars for general national purposes.

[4] An act, chap. 12, "further to organize the government of this State" was passed March 16, 1778. It contained numerous details as to the organization, jurisdiction, and administration of various State departments and officers.

sity of making proper provision for the support of government, on the vigour and dignity of which the tranquillity of the state will in a great measure depend.

As the constitution has not prescribed the particular mode in which elections are to be conducted, you will turn your attention to some law for that very necessary purpose.[5]

Without detaining you any longer at this time, I shall, Gentlemen, in the course of the session take occasion to lay before you such other matters as I conceive the necessities of the state require.

GENTLEMEN.—The late convention having, in their plan of government, manifested the most scrupulous attention to the freedom and happiness of the people, and by marking the line between the executive, legislative and judicial powers, wisely provided for the security of each, it becomes our duty to second their endeavors, and as our conduct will in some measure be a rule for those who are hereafter entrusted with the administration of government, let us remain within the several departments in which the constitution has placed us, and thereby preserve the same inviolate, and repay the trust reposed in us by our constituents when they made us the guardians of their rights.

I do not urge this, Gentlemen, because I conceive the caution necessary to you, but to show the important light in which I see this object, and to convince you (however

[5] An act to regulate elections, chap. 16, was passed March 27, 1778. The last Tuesday of April was designated as general election day, and as the day on which the Governor, Lieutenant-Governor, Senators and Members of Assembly were to be chosen. The act required a person voting for Senator or Member of Assembly to deliver his vote *viva voce*, and with an audible voice in the presence of the inspectors, but votes for Governor and Lieutenant-Governor were to be by ballot, using a paper ticket. The State Board of Canvassers was to consist of a joint committee of the two houses of the Legislature, six from each. The official term of the Governor, Lieutenant-Governor and members of the Legislature was to begin on the first Monday of July next following their election. The election bill was vetoed by the Council of Revision on the 25th of March, but was passed over the veto.

unequal I may find myself to the task) that it shall always be my strenuous endeavor on the one hand to retain and exercise for the advantage of the people the powers with which they have invested me; on the other, carefully to avoid the invasion of those rights which the constitution has placed in other persons.

GEO. CLINTON.

Kingston, September 10, 1777.

SPECIAL MESSAGES.

September 12. To the Senate: Transmitting papers containing the proceedings of the committees from the states of New Hampshire and Massachusetts Bay, Rhode Island, Connecticut and New York at their meeting held at Springfield, in the county of Hampshire, the 30th day of July, 1777, for the purpose of holding a conference respecting the state of the paper currency of the said governments, and other matters therein mentioned.

September 13. The Assembly presented an address to the Governor, congratulating him on his election, and assuring him of the confidence reposed in him by the Assembly and the people. The Assembly expressed gratification that the meeting of the legislature offered an opportunity "to assist in the organization of our free constitution," declared its confidence in the late Council of Safety, commended the late General Herkimer's success, which had resulted in frustrating the enemy's designs in the recent campaign near Fort Schuyler, and expressed gratitude for the victory near Bennington, which the Assembly hoped "would tend to convince our haughty foes, that to destroy the spirit of liberty, they must destroy the inhabitants of this extensive country." The Assembly also expressed its approval of General Clinton's recent military operations, of his suggestion that the militia laws be revised; assured him that it would give immediate attention to pub-

lic debts, "as well to prevent their further accumulation, as to support the credit of our currency;" that it would try to apply adequate remedies for the evils arising from the want of a government properly organized; that it would make proper provision for the officers of government;[6] would join the Senate in enacting a law regulating the mode of elections; and would give due regard to matters presented by the Governor for the consideration of the Assembly. In conclusion the Assembly said:

"The several precautions taken by the late Convention, for securing to the subjects of this State, the full enjoyment of political, civil and religious liberty, do equal honor to their wisdom and virtue. We thoroughly approve your Excellency's intention to retain and exercise all the powers with which you are invested, and we trust that you will exert yourself vigorously to execute the laws, for the restoration of good order and the suppression and punishment of vice and immorality—while, as faithful guardians of the rights of our constituents, we are determined neither to encroach upon the privileges of others, nor suffer our own to be invaded; we shall heartily concur in all things for the advantage of the people over whom you have been chosen to preside."

The Governor thanked the Assembly for this address, saying that it was his desire and intention to "execute the laws, maintain the peace and freedom, and support the honor, independence and dignity of the people of this State," and he had the fullest confidence that the Assembly would concur in every measure calculated to promote those great and important purposes.

September 17. To the Senate: The Governor transmitted papers received from the Tryon County committee, which he said affected one of the members of the Senate.

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[6] Compensation of public officers was provided for by the salaries act, chap. 35, passed April 4, 1778.

On the same day the Governor sent the following communication to the Assembly:

"GENTLEMEN.—From a number of papers this day received from the Committee of Tryon County, copies of which accompany this message, you will learn the situation of our public affairs in that quarter. There is reason to believe, that the orders, which I issued to General Herkimer, to embody five hundred of his militia, for the defence of the exposed inhabitants of the Western frontiers, against the incursions of the enemy, and which he must have received but a short time before his death, have not been carried into execution; as I find the Committee expect one hundred rifle men, and four hundred of the militia of the other counties, to be detached from the northern Army for that purpose, agreeable to a resolve of the late Council of Safety.

The militia of that County being greatly enervated and dispirited by the loss of many of their bravest officers and men in the late action under General Herkimer, and the inhabitants much exposed to the ravages of the enemy, I submit to the Legislature the propriety of making provision for embodying and paying such a number of troops as may be judged necessary for the defence of that part of the country.[7]

The adjusting and discharging the pay due to their militia for public services, also merits the attention of the Legislature.[8] And if the Commissioners were appointed for settling the disorders subsisting in the county, arising from a variety of causes, mentioned in the papers referred to, I think many valuable purposes would be thereby answered.

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[7] An act, chap. 5, passed February 21, 1778, appropriated ten thousand pounds for expenses of the militia when called into actual service.

[8] Provision for the payment of militia claims was made by chap. 20, passed March 30, 1778.

A number of prisoners, charged with the offences specified in the papers herewith delivered, were apprehended by different persons, and have this day arrived from Westchester and Tryon counties. It appears to me highly necessary, that effectual provision be made, for the more safe custody and better accommodation of prisoners, as well as for apprehending and detaining persons, whose going at large might be dangerous to the State. Justice demands, that means be devised for the examination and discharge of such prisoners as may have been deprived of their liberty, without due cause. The usual and ordinary course of law, appears inadequate to the exigency of our affairs, and the wide extension of the Habeas Corpus Act, may, unless restrained for a time, with respect to persons charged with treasonable practices, prove injurious to the public interest.

You will be pleased, Gentlemen, to communicate to the Honorable the Senate all such messages as you may from time to time receive from me.

GEO. CLINTON."

Kingston, September 16, 1777.

September 18. To the Senate: Informing that body that on the 16th, the Assembly had appointed John Morin Scott, a Senator from the southern district, Jesse Woodhull from the middle district, Abraham Yates from the western district, and Alexander Webster from the eastern district, to constitute the Council of Appointment.

September 19. Replying to an inquiry by the Senate when it would be convenient for him to receive its answer to his opening speech, the Governor said he was very busy in getting out the militia to march to the reinforcement of the northern army, but that he would be ready at eleven o'clock on the following Monday at the house of Christopher Tappan, to receive any public business which the Senate might think proper to lay before him.

September 22. The Governor thanked the Senate for its address which was that day presented to him, and which considered, with some variations of statement, substantially the subjects included in the Assembly's address.

September 29. To the Senate: Transmitting copies of the "proceedings and resolutions of Congress ordering an inquiry into the cause of the evacuation of Ticonderoga and Mount Independence, and the conduct of the general officers who were in the Northern Department at the time of the evacuation," with a letter from the committee, and the Governor recommended "the necessity of adopting proper measures for collecting and stating the facts in those proceedings and resolutions, particularly specified, agreeable to the request of the committee contained in their letter."

October 7. Both Houses adjourned quite abruptly in consequence of the near approach of the British army, which was carrying on a vigorous campaign in the Hudson River valley.

According to the Assembly journal, the House met on the 7th in the morning, and without transacting any business adjourned until four o'clock in the afternoon. The next record is under date of January 5, 1778, which explains the failure of the Assembly to meet in the afternoon of the 7th of October, by the statement that "intelligence of the loss of the forts in the Highlands, and the irruption of the enemy into the adjacent parts of the State, having been received in the intervening time, between the last meeting of this House, and the hour to which it was adjourned, several of the members, holding commissions in the militia, were obliged immediately to leave Kingston; in consequence whereof, a sufficient number to consent with the Honorable the Senate to an adjournment of the Legislature, or to proceed on business, did not afterwards assemble."

The Senate journal of January 5, 1778, contains the following:

"About Noon on Tuesday, the seventh day of October last, news came by express of the reduction of Fort Montgomery, in the Highlands, and its dependencies, by the enemy; and although this Senate thereafter adjourned till Wednesday morning, the eighth of October last, yet so many members of the Honorable the House of Assembly absented themselves on military service, and for the necessary care of their families, in consequence of that event, that there were not a sufficient number of them left at Kingston to form a house for business; which rendered the meeting of the Senate, according to adjournment, useless; and therefore the Senate ceased to attend on the public business, until his Excellency the Governor thought proper to convene the Legislature of this State."

On the 7th of October, 1777, the members of the Senate and Assembly, in view of the interruption of their proceedings and their inability to continue in session as the Legislature, formed themselves into a convention, and appointed a new Council of Safety, vesting it with the powers possessed by the former Council of Safety, and authorizing it to meet when the Convention was not in session. The Governor, or the President of the Senate, when present, was required to preside in the Council and had a casting vote.

The Convention immediately informed Governor Clinton of the action of the Legislature, transmitting to him the resolutions creating the Convention and the Council of Safety, accompanied by the following letter:

"KINGSTON, *October* 7, 1777.

"SIR.— By the enclosed resolution, your Excellency will perceive what steps the Legislature have taken to provide for the safety of the State in the present emergency. The impossibility of keeping the several members in attendance

on so critical an occasion must apologize for the measure. We hope soon to meet you again in our former capacity as members of the Senate and Assembly; in the interim, you will be pleased to make application to the Council of Safety for such matters and things as may to you appear from time to time necessary."

On the 21st of November, the Council of Safety appointed a committee to confer with the Governor "on the expediency of putting an end to the sessions of this Council, either by calling the Legislature of this State, or a Convention thereof."

Governor Clinton, who was then at New Windsor, informed the committee that on account of the exigencies of the war, he could not attend to public business farther distant from New Windsor than Poughkeepsie; and recommended that the Legislature be convened at Poughkeepsie early in January, if accommodations could be procured there. On being advised that accommodations could be had, the Governor issued a proclamation December 15, convening the Legislature at Poughkeepsie on the 5th of January, 1778. Several members of each House met on that day, but a quorum did not appear until the 15th.

Kingston had been destroyed by the British on the 16th of October, and the Council of Safety had been compelled to meet elsewhere. After meeting at several places in Ulster County, including Hurley, the Council met at Poughkeepsie on the 22d of December, and afterwards from day to day, until the 7th of January, when it was superseded by the Convention. This body continued in session until the 14th. Its members, being also members of the Legislature, met the next day in the latter capacity, and the Convention ceased to exist.

1778. January 16. The Governor sent the following communication to the Senate:

"GENTLEMEN.—Agreeable to the directions of Congress,

I embrace this earliest opportunity of laying before your Honorable House, the proposed articles of Confederation and perpetual Union between the United States of America, with the letter of Congress of the 17th of November last, recommending them to the consideration of the Legislature of this State for their approval.[9]

A copy of a letter from his Excellency General Washington, dated the 29th of December, enclosing a return of the two regiments raised in this State, commanded by Colonels Cortlandt and Livingston; and of a letter from Francis Lightfoot Lee, Esquire, a member of Congress, dated the 30th of December last, also accompany this message. The important matters they contain, will, I cannot doubt, engage your immediate attention.

GEO. CLINTON."

Poughkeepsie, January 16, 1778.

January 16. Transmitting to the Assembly several resolutions of Congress, and also an "act of the Legislature of the State of Massachusetts Bay, and a resolution of the House of Representatives of that State of the 9th of October last, transmitted to me by the President of the Council, whereby you will perceive the laudable measures they are pursuing for sinking their public debt, raising their credit, and supporting the war in future." Continuing the Governor said:

"The loss of the important fortresses on Hudson's River, renders your aid for the security of the communication of the river, and the passes of the Highlands, indispensably necessary. While I regret our misfortunes in that quarter, I am happy that the total defeat and expulsion of the enemy from the northern parts of this State, will allow you to turn a greater share of your attention to those objects." (See note 1.)

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[9] The Articles of Confederation were ratified by the New York Legislature by chap. 1, passed February 6, 1778. A supplementary act, chap. 30, was passed October 23, 1779, and an act, chap. 38, to facilitate the completion of the articles, was passed February 19, 1780.

January 22. The plan of obstructing Hudson River with an iron chain received attention in the following message to the Senate from the Governor and the accompanying letter:

"GENTLEMEN.— By a letter from Col. Hugh Hughes, Deputy Quarter Master General (a copy of which will be delivered to you with this message), you will observe, that from the want of money in this department, the works for the securing of Hudson's River will be greatly retarded, unless he can be supplied by this State with the small loan therein mentioned.

As the least delay in the prosecution of this important business may be attended with the most fatal consequences to the public in general, and to this State more particularly, I must earnestly recommend to the Legislature, the granting the desired loan, if the State of the Treasury is such as to admit of it.[10] GEO. CLINTON."

Poughkeepsie, January 22, 1778.

"POUGHKEEPSIE, *January* 22, 1778.

"SIR.—I find it impracticable to engage the Stirling Iron Works for the public service, unless arrearages are discharged, which it is not in my power to do, as the office is entirely out of cash. If the Legislature of this State would advance about £5000, I think there will be little or no difficulty in getting all the iron that is necessary for the obstruction of the river, providing the department is furnished with cash to pay for what shall be delivered; but without this small loan, the business of the chain, for the security of the River, must be retarded.

I am, with great respect,

Your Excellency's most obedient,

HUGH HUGHES, D. Q. M. G.

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[10] The Senate passed a concurrent resolution on the 22d of January, which was concurred in by the Assembly on the 23d, directing the treasurer to loan Col. Hughes five thousand pounds for the purpose indicated in his letter. See also note 1.

P. S. This sum shall be punctually repaid out of the first public monies received.

H. H."

January 28. To the Senate: Transmitting for its consideration a letter from Cadwallader Colden, Esquire, a prisoner confined by a law of this State, and a petition of a number of inhabitants of the district of "Coxakie" in the county of Albany in behalf of John Cumming, also a state prisoner.[11]

January 30. To the Assembly:

"GENTLEMEN.—The high price of iron, as well as the growing scarcity of that indispensably necessary article, induces me to lay before your Honorable House, for the consideration of the Legislature, certain proposals made by Col. Livingston, of letting to the public, his furnaces, forges and appurtenances, for a reasonable compensation; an abstract of his letter to me, of the 8th of January instant, containing his proposals, accompanies this message.

GEO. CLINTON."

Poughkeepsie, January 30, 1778.

February 3. To the Assembly: Transmitting a letter from Jacob Cuyler, Deputy Commissary General of Purchases for the Northern Department, a letter from Major General Heath, an act of Congress of December 29, 1777, "for bringing to punishment such of the inhabitants of any of the United States as shall be taken in arms against

[11] The Senate appointed a special committee to consider this message, relative to the cases of Cadwallader Colden and John Cumming, which reported that in its opinion the subject was within the jurisdiction of the commissioners for detecting conspiracies, securing all such persons as to them appear disaffected to the American cause, and the ordinary civil magistrates of this State. This report was agreed to, and the message and accompanying papers were sent to the Assembly. That House concurred in the action taken by the Senate, and the whole matter was referred to the commissioners to detect conspiracies. These commissioners were created by an act, chap. 3, passed February 5, 1778, and the number was enlarged by chap. 31, passed April 3.

the same," and also copies of letters from the chairman of the Ulster County committee, and the Governor recommended the relief of the distressed families of indigent persons referred to in the letters, and also the families of such others as were killed or made captives fighting in defence of their country at Fort Montgomery.

THE FIRST VETO.

February 4. To the Senate: The Council of Revision, by Mr. Justice Yates, presented the following objections to a bill:

"At a Meeting of the Council for revising all bills, about to be passed into laws by the Legislature of the State of New York, held at the Chamber of his Excellency the Governor, at Poughkeepsie, on Tuesday the third day of February, 1778.

PRESENT:

His Excellency Governor Clinton,
The Honorable Robert R. Livingston, Esq; Chancellor,
The Honorable John Jay, Esq; Chief Justice
The Honorable Mr. Justice Yates,
The Honorable Mr. Justice Hobart.

The bill, entitled, 'An act requiring all persons, holding offices or places under the Government of this State, to take the oaths therein prescribed and directed,'[12] having been

[12] The official oath bill was passed again with various amendments, and became a law, chap. 7, on the 5th of March, 1778. According to the Senate journal no vote was taken directly on the repassage of the bill in its original form, but it was considered in committee of the whole, and was amended in several particulars.

The possible effect of a veto on the powers of the Legislature was considered by the Senate on this occasion, and while consenting to an amendment to obviate the objections presented by the Council of Revision, the Senate declared that neither the concession hereby made to the Council's objection, "nor the amendment aforesaid to be thereon made, shall be drawn into precedent; so as in any wise to impeach, impair, or diminish the freedom of legislation vested in this Senate by the Constitution."

The Assembly concurred in the Senate amendments.

revised and considered by the Council, they object to its becoming a law of this State, for the following reasons, to wit,

1st, In the Oath of office prescribed for Sheriffs and Under-Sheriff they are restrained from taking more than lawful fees or rewards for the impanelling or returning of any inquest, jury, or tales, in any court of the People of this State, or between party and party, or for the serving any legal process whatsoever. Whereas, if any express prohibition to the taking undue fees and rewards was deemed necessary, it should not be confined to those particular services, but ought to extend to all acts which sheriffs, or under-sheriffs, are bound, by the duties of their offices, to perform, and which acts may, without a particular enumeration, be comprehended under general descriptive terms.

2d, The Bill, after prescribing particular oaths for the Secretary of State, Sheriffs, Under Sheriffs, and Clerks of Counties, provides, That all other ministerial officers, in this State, shall take the following oath, viz. 'I, A. B. (chosen or appointed, as the case may be) to the office of , for the County of do solemnly, in the presence, &c. &c.' As this oath has express reference to County officers, it cannot with propriety be administered to, or with truth taken by the following ministerial officers, none of whom are appointed for any particular county, viz. The Clerk of the Supreme Court and *Nisi Prius*, the Clerks, Registers, and other officers in the Court of Chancery, Admiralty, and Probates; nor can it reach the Attornies, Proctors, and Sollicitors, practising in those courts, or to Brigadiers and other Generals of the Militia of this State, who cannot come under the description of persons appointed or chosen to the office of for the county of

3d, The President of the Senate, when he shall administer the Government, is not named among those officers who

are directed to take the oaths before persons to be appointed by a commission, in the nature of a *dedimus potestatem;* and therefore, as the Bill now stands, must take the said oath before a Justice of the Peace in the County where he shall reside.

4th, That only the Governor, Lieut. Governor, Members of Senate and Assembly, Chancellors, Judges and Justices, Secretaries of the State, Sheriffs, Under Sheriffs, Clerks of Counties, and all Military Officers, are required to take the said oaths before persons to be appointed by Commission, in the nature of *dedimus potestatem;* and yet the rolls to be kept by the said persons, are mentioned in the said bill, as containing the oaths and subscriptions of the several officers of the Court of Chancery, Supreme Court, Court of Admiralty and Court of Probates, although none of the officers of the said Courts, except the Chancellor, Judges, Sheriffs, and Under Sheriffs, are directed to take the said oath or make the said subscriptions before such Commissioners.

5th, That the Justices of the Peace before whom the ministerial officers, described in the Bill, are directed to take the said oaths, are not required to keep any rolls or record thereof, or to furnish the officers, taking such oaths, with a certificate thereof; nor is any provision made, whereby, in case of the death of the Justice, the people may be informed, or the officer obtain evidence of his having taken the said Oaths, although such information and evidence is rendered highly important, by the clause which declares offices, *ipso facto* vacant, on neglecting to take the oaths.

The Council objects to the last Clause in the Bill, which declares Officers, *ipso facto* removed, and the offices *ipso facto* vacant, from and immediately after neglect to take the oaths, for the following reasons, viz.

1st, That no time is allowed to the said officers to consider and make their election, either to accept or refuse the said offices.

2d, That the Bill does not define what shall be deemed a neglect, but leaves it to be tried as a mere matter of opinion, not reducible to a certain rule or standard.

3d, That as the persons appointed to administer the said oaths, are bound to administer them to every officer who shall produce a commission, or other proper evidence of his appointment or election, and are not authorized previously to inquire into the neglect mentioned in the bill; very honest and good officers may, after having inadvertently been guilty of such neglect, take the said oaths, and enter on the execution of their offices, and that not merely at their own peril, but at the peril of the whole community; for, should such officers be afterwards prosecuted for exercising offices which such neglect had rendered void and vacant, and be convicted thereof, all proceedings had before them, and all acts done by them, would of course be adjudged null and void.

GEO. CLINTON."

Poughkeepsie, February 4, 1778.

February 6. To the Assembly:

"GENTLEMEN.— You will perceive from the papers herewith delivered to you, the unhappy situation of the good subjects of this State in the Eastern District [afterwards Vermont], oppressed by the unwarrantable proceedings of a number of persons, who have combined to effect a separation of that country from this State; they demand your protection and interposition, a due attention to this subject is of the last importance, and I flatter myself you will without delay, adopt such measures for the restoration of order and good government in that District, as justice may dictate, and the Honor of the State require.[13]

You will also herewith receive a copy of the proceedings of the late Convention at New Haven, for regulating the

[13] For a note on the Vermont controversy, see *post*, p. 47.

Prices of labor, &c. which was delivered to me by one of the Commissioners deputed to that Convention, by this State.[14]

GEO. CLINTON."

Poughkeepsie, February 6, 1778.

February 12. To the Senate:

"GENTLEMEN OF THE LEGISLATURE.—I recommend to your consideration, the several matters contained in the petition of the Committee, and a number of the freeholders of Tryon County, dated the 27th of January last, which I am requested to lay before you: A copy of which petition will be herewith delivered to you.

The unhappy condition of the families of those brave men, who fell in defence of their country, in the action under General Herkimer, I flatter myself, will engage your early attention, and that such relief will be afforded to them by the public, as justice will warrant, and their peculiar distresses require.

You will also receive with this message, copies of the resolutions of Congress, of the 19th of December and 21st of January last, regulating the conduct, to be observed in future, in the treatment of prisoners of war; which, as they are founded on the strictest principles of justice and good policy, I have great reason to hope, will produce the salutary effects thereby intended.[15]

GEORGE CLINTON."

Poughkeepsie, February 12, 1778.

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[14] An act, chap. 34, passed April 3, 1778, regulated the wages of mechanics and laborers, the prices of goods and commodities, and the charges of innholders within this State. This act was suspended by an act, chap. 42, passed on the 29th of June, 1778. See the Governor's special message of June 22, 1778. This act was repealed at the next session by chap. 2, passed October 28, 1778.

[15] An act, chap. 9, based on this recommendation, was passed March 13, 1778, "to enable the Governor to assist the Continental Commissary of Prisoners within this State with means to secure the prisoners of war under his direction."

February 18. To the Senate:

"GENTLEMEN OF THE LEGISLATURE.—I think it my duty to lay before you a copy of a letter, dated the 5th of February, from James Deane, Esq; to the commissioners of Indian Affairs for the Northern Department; with a copy of a letter from them to Congress, and also the copy of a letter from Major General Schuyler to me, both dated the 8th of February instant; as these papers tend to discover the hostile disposition of some of the savage tribes (who are influenced by the bribes and wicked machinations of our cruel enemy) and to evince the necessity of adopting proper measures for securing the Western Frontiers against their ravages.

GEORGE CLINTON."

Poughkeepsie, February 18, 1778.

February 20. To the Assembly:

Objections by the Council of Revision to an act "to prevent the exportation of flour, meal and grain out of this State."[16]

The opinion was prepared by Chief Justice John Jay, and is in part as follows:

"The Council object to the said bill, as being inconsistent with the spirit of the Constitution of this state,—because it recognizes the late supposed Council of Safety as a legislative body, when in fact all legislative power, is to be exercised by the immediate representatives of the people in Senate and Assembly,[a] in the mode prescribed by the Constitution; for tho' the people of this State, have heretofore been under the necessity of delegating their authority, to Provincial Congresses and Conventions, and of being governed by them, and the Councils and Committees of Safety, by them from time to time appointed;

[16] This bill was passed over the veto, and became a law, chap. 10, on the 14th of March, 1778.

[a] Const. 1777, § 2.

yet this Council conceives, that these were mere temporary expedients to supply the want of a more regular government, and to cease when that prescribed by the Constitution, should take place, and can in no wise justify the appointment of a Council of Safety, other perhaps, than as a Committee to advise and recommend, after the organization of the present government, and the actual entry of the Senate and Assembly, upon the business of legislation; at which period, the Council are of opinion, that all Conventions and Councils of Safety had ceased, and could not thereafter be instituted or appointed, consistent with the Constitution of this State; and that the people did not give or delegate to their representatives in Senate or Assembly, any power or authority at their discretion, to revive the government by Conventions or Councils of Safety, or in any other manner to dispense with, or suspend the government established by the Constitution. These objections, in the opinion of the Council, operate with the greater force against the recognition of the Council of Safety in question, as it was not even appointed by the Legislature, but by a number of the members, who had resolved themselves into a Convention, after the organization of the government instituted by the Constitution; and therefore, altho' the rectitude and well meaning zeal of that Council of Safety, may give them a claim to indemnity, neither the mode of their institution or the edicts they made ought in the opinion of this Council to be held up by the Legislature, as constitutional or obligatory, especially as the Constitution does expressly, '*Ordain, determine and declare, that no authority shall under any pretence whatsoever, be exercised over the people or members of this State, but such as shall be derived from and granted by them.*'[b]

On these principles this Council find themselves, constrained to object to the preamble of this bill. It recog-

[b] Const. 1777, § 1.

nizes and speaks of this Council of Safety, as if it had been a body constitutionally instituted, and known in the law of the land. It speaks of their resolution, as laying an embargo, which it was expedient to continue, thereby intimating that the said resolution was obligatory on the people, when in fact it was not obligatory, nor were they in the least bound to obey or regard it.

On the same principles this Council, also object to the first enacting clause.

It enacts that the said resolution of the Council of Safety, and the embargo thereby laid, (except such parts thereof as are thereinafter repealed) shall stand and be confirmed, and continued; thereby plainly giving countenance to the said resolution, and evidently acknowledging it to have force and validity.

The second, third and fifth clauses, are under the like predicament with the first, and the Council objects to them on the same principles.

The Council objects to the sixth enacting clause, as inconsistent with the spirit of the Constitution.

First. Because this clause supposes the continuance of county and district or precinct committees, and thereby implies, that they are necessary and proper to the Government of this State; but the government established by the Constitution, knows of no County or district or precinct committees, and being appendages to, and parts of the same system of expedients with Conventions and Councils of Safety, they ceased together, and cannot, consistent with the Constitution, be revived.

Second. The Council object to the Court instituted by this clause for the trial of intentional exports without license.

Because, in this Court the person who makes the seizure, is to empanel the jury, and yet no power is given to compel their attendance; he is to sit as judge, to determine the pro-

priety of evidence and challenge and yet in certain cases must be the prosecutor.

In this Court the party prosecuted, may be proceeded against in his absence, and condemned to forfeit his property, without a hearing; for notice to the person then having the care and possession of the flour, &c. is no notice to the owner; nor in case such person be a slave, is any notice to be given to the owner of the flour, unless he happens to be known to the person who seized it.

In this court no means are provided, whereby the defendant can compel the attendance of his witnesses.

In this court, the defendant cannot compel a speedy trial, for the person who makes the seizure, is at liberty by the bill, to cause the inquiry to be made when he may think proper.

In this court, provision is made for the payment of costs and charges, only on the conviction, but not on the acquittal of the defendant; so that the court and jury as well as witnesses, will be interested against him.

The Council object to the said bill, as being in their opinion, inconsistent with the public good.

First. Because as the Bill recognizes the Council of Safety, and their resolution for laying an embargo, in terms which amount to an acknowledgment of their right to make laws; all the other resolutions they have passed, must be deemed of equal validity with this; whereby a number of new laws, which have never been under the consideration of the Legislature, and perhaps repugnant to the Constitution, will be introduced among the laws of this State.

Second. Because in the opinion of this Council, every freeman in this State has a right to do any act, which is not forbidden by the laws of God or of the State, and therefore that such acts, cannot, consistent with the public good, be deemed to have been illegal, by laws afterwards made, and which did not exist at the time when such acts

were done; wherefore the Council object to that part of the first clause in the bill which retrospects, and attempts to validate and confirm certain parts of the resolution of the Council of Safety, *from the time it was made and published.*

Third. Because however expedient an embargo may be, yet liberty is not granted for the transportation of flour, &c. from the Southern States, thro' this State, to New England.

Fourth. Because it is not, in the opinion of this Council, consistent with the public good, that the first magistrate of the people, should be diverted from the important duties of his office, by a necessity of personally hearing and trying the merits of the numerous applications which will be made to him for licenses, from different parts of this and the neighboring States, as well as from the Commissaries of the Army, which business it will be very difficult for him to transact, when called into the field at the head of the militia.

Fifth. Because as the Governor is the only person, authorized by the bill to grant licenses, it imposes undue hardships and expense on the inhabitants of those parts of the State, who are remote from the place of his residence.

Sixth. Because as by the bill, mere suspicion alone, without any proof or evidence of intention to export without license, is sufficient to justify any committee man, justice, sheriff or other peace officer, to seize and detain flour, &c. passing thro' any part of this State, the Council apprehend that the Domestic trade of the people of this State, with one another, will be subjected to difficulties and interruptions, and innocent men often distressed; especially as on such seizure, they will be obliged to maintain their cattle, horses and slaves, at the place in which they may be seized, until the person who seized them, may think proper to give them a trial; and which, if there be malice in the case, will on various pretences, of witnesses absent, &c. be unnecessarily protracted and delayed.

Seventh. Because altho' the bill makes it lawful, for the Governor with the advice of two members of the Legislature, to grant licenses for exports, it does not require him, or make it his duty to do it, so that should he decline acting as a Commissioner, for granting those licenses, none will or can be granted; and consequently all exports, even for the use of the army, must cease. The Members of the Legislature are also left at liberty, by the bill, either to attend the Governor when called, and advise him on the propriety of granting particular licenses, or not, so that should they find it inconvenient to be often called from home on this business, without compensation, and therefore decline it, in that case, also, no licenses can be granted.

Eighth. Because as this bill is to continue in force until repealed, and as the future meeting of the Legislature, may be rendered uncertain by the military operations in this State, the embargo may exist longer than the necessity which dictated it, in which case the trade of this State would be injured, and the neighboring States stimulated to retaliation, especially considering how greatly they were censured by this State, for laying embargoes when not pressed thereto by necessity.

By order of the Council.

GEO. CLINTON."

Poughkeepsie, February 20, 1778.

March 10. To the Assembly:

"GENTLEMEN.—Pursuant to a resolve of Congress of the 18th day of February last, authorizing and requesting me to superintend the business of obstructing, fortifying and securing the passes of the North or Hudson's River, agreeable to the resolutions of the 5th day of November, and to employ the militia of this State, and to call upon the Massachusetts Bay and Connecticut, for such parts of their militia as may be thought necessary, and those States can

spare for executing that important business, a copy of which resolutions you will receive with this message; I am to request that you will provide for the raising and calling into service, seven hundred of the militia of this State, for those important purposes, to continue in service to the first of January next. In consequence of the resolutions referred to, I have also requested of the States of Massachusetts and Connecticut, two thousand three hundred of the militia of those States for the same service, making in the whole, three thousand men, which with such Continental troops as may be spared, I have judged only barely sufficient for this service. The States at large, and this State in particular, is so immediately interested in the speedy execution of this business, that I trust any arguments to excite the Legislature to a speedy compliance with this request, would be unnecessary.[17]

I have only to observe, that I am induced thus far to exercise the powers vested in me by Congress, to avoid the delay, which declining it would necessarily occasion, as the Legislature will readily see, that while they continue sitting, it would be altogether out of my power to pay that attention (which I would wish to give) to the works for the security of the passes of the River, and which their importance demands, and the safety of this State absolutely requires.

You will also herewith receive a copy of the resolution of Congress of the 9th day of February last, recommending it to the Legislatures of the several States, to enact laws for the speedy and effectual recovery of debts due to the United States of America.

GEO. CLINTON."

Poughkeepsie, March 10, 1778.

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[17] A bill to provide for raising seven hundred men was duly passed, but was vetoed by the Council of Revision. It was passed over the veto, and became a law, chap. 22, on the 31st of March, 1778.

March 17. To the Assembly:

"GENTLEMEN.—You will receive with this message, a copy of an act of Congress, of the 26th day of February last, for filling up the Continental battalions and a copy of a report from the Board of War, showing the number wanting to complete them.[18]

These papers came to my hands last night, and as they respect a subject long since recommended to the consideration of the Legislature, I take the earliest opportunity of laying them before you.

A copy of another act of Congress, of the 26th day of February, respecting the exchange of prisoners, will be also herewith delivered to you, by which you will observe, that the accounts of money, provisions and other necessaries, which have been supplied to prisoners taken by the United States, are to be transmitted by the different States as speedily as possible, to the Commissioners of Claims at the Board of Treasury. You will therefore be pleased to take the proper measures for effecting this business, as far as it may concern this State.

GEO. CLINTON."

Poughkeepsie, March 16, 1778.

March 21. To the Senate:

"GENTLEMEN.—You will herewith receive a resolution of the Honorable the Congress, of the 12th of March, instant. The subject of it is highly important, and demands your most serious attention.

I think it my duty to inform you, that divers disaffected persons and families dwell and reside in the vicinity of several of the posts, forts and passes in this State, and that there is great reason to suspect, that they are instru-

[18] The act, chap. 28, for completing the five Continental battalions raised under the direction of this State, was passed April 1, 1778, in response to this message, and the accompanying resolution.

mental in giving the enemy important intelligence from time to time, of their State and condition. It is not in my power to remove them, and therefore submit to you the propriety of speedily devising some means whereby they may be removed. This business calls for the greater dispatch, as the season for military operations approaches fast.[19] It is also proper, that you should be informed, that there are in this State, certain persons who have collected considerable quantities of provisions of various kinds, which they refuse to sell at the current price, for paper money. This evil, unless immediately remedied, may prove of dangerous consequences, as there is reason to presume, that those supplies are intended for the use of the enemy.

I think it my duty to inform you, that some late accounts I have received of the movements of the enemy, have induced me to order a considerable body of the militia to the posts in the Highlands, as well to provide for their defence, as to forward the works erecting there to secure the navigation of Hudson's River. Should the operations of the enemy render it necessary to call a greater proportion of the militia into the field, I shall think it my duty to head them; and therefore, I flatter myself, that the more important objects only of the Legislature, will, for the present, engage their attention.

GEO. CLINTON."

Poughkeepsie, March 21, 1778.

March 25. To the Senate:

Objections by the Council of Revision to a bill "to regulate elections within this State." (See Note 5.)

The Council object to the said bill:

"1st, Because the bill directs that the Clerk of the Senate, in every year, between the first day of February and

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[19] The Governor's recommendation, relative to certain suspected persons, resulted in an act, chap. 27, passed April 1, 1778, which authorized the Governor to remove certain disaffected and dangerous persons and families.

the first day of April, shall give notice, in writing, to the several sheriffs, of the number of senators, &c. to be for that year elected; and, that the sheriffs transmit copies of such notices to some one of the inspectors in each precinct, district, &c. so that should the Clerk of the Senate happen to die, between those two periods, in the recess of the Senate, (no provision being made for so important a contingency) the design of the bill, in this instance, may be defeated; unless indeed, should the Legislature be seasonably convened for the purpose, and the Senate appoint another.

2dly. Because the Constitution of this State, does, among other qualifications to entitle a person to vote at an election for a member of Assembly, require that such person should, within six months, immediately preceding such election, have been rated and actually paid taxes to this State,[c] and yet by the bill in question, persons not so qualified are authorized to give such vote; and although the omission of a timely tax may, for the present year, render such qualification unattainable; yet, in the opinion of this Council, such omission can neither justify or excuse the dispensing with such qualification, at least for the years thence ensuing.

3dly, Because the said bill directs, that a box, with a lock and a hole in the lid, sufficiently large to admit a ballot, shall be provided and kept by the inspectors at elections; and that whenever they adjourn the poll, the poll lists shall be put in the said box with the ballots, and shall be locked in the presence of all the inspectors; the key to be delivered to such one, and the box to such other of them, as the majority shall nominate, &c. But this Council cannot perceive the use of causing the said box to be so locked and delivered, while the hole in the lid, through which ballots may be shaken out or put in, is permitted to remain open.

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c Const. 1777, § 7.

4thly, Because the bill directs the sheriffs to return transcripts of the poll lists for senators taken at elections in the respective counties, to the Secretary's office, 'from whence due notice in writing shall, without delay, be issued and transmitted to each of the persons respectively, who shall appear to be senators elect, by plurality of voices in the district, to the end, that they may give punctual attendance, and take their respective seats,' &c. But the said bill does not direct by whom such poll lists shall be canvassed, and the votes estimated, nor by whom such notice shall be given; for although, from the said returns being made to the Secretary's office, and the notice aforesaid issued from thence, it would seem as though the Secretary is intended; yet, in the opinion of this Council, it does not necessarily follow, that he is the person; and if he was, yet, in the opinion of this Council, this important business ought expressly to be made a part of his duty, and that the public may have the security of his oath of office.

5thly, Because the bill doth expressly prohibit all persons, other than the sworn clerks, to make or take any poll lists, at any of the said elections, on pain of being committed to the gaol of the County, for a space not exceeding thirty days; thereby depriving the people of this State, of a right, which, in the opinion of this Council, they ought to enjoy in common with all other freemen, of writing or committing to paper, those, or any other fact or facts which may happen

6thly, Because the said bill authorizes and requires the inspectors, to commit to gaol, for a space not exceeding thirty days, all persons who shall make or take poll lists as aforesaid, or be guilty of disorderly conduct at the said elections, or of using corrupt or indirect means to influence the electors; as these offences may not always be committed under the eye of the inspectors, but made known to them by evidence on accusation, this Council are of opinion, that the party accused, ought, in all such cases, to have the bene-

fit of a trial by his peers, before he shall be subjected to so grevious a punishment, and the inspectors authorized only to bind them over to such court, as is or may be authorized to take cognizance thereof; and this Council consider the said power, to commit, so far as it respects persons who shall attempt to influence electors, as the more extraordinary and improper, because a subsequent clause in the bill subjects such persons to a penalty of five hundred pounds on conviction of the said offence.

7thly, The said bill disqualifies and incapacitates to vote or hold offices, all such of the inhabitants as hereafter shall, or since the 9th day of July, 1776

1. Have before any Congress, or Convention, or Committee, or Council of Safety, or Committee, or Commissioners of Conspiracy, acknowledged the sovereignty of the British King and Parliament over this State.

2. Or denied the authority of the present government and legislature of this State.

3. Or of the former government thereof by Congresses or Conventions, Committees or Councils of Safety, and other Committees.

4. Or the independency of this State.

5. Or taken arms with the enemy against these States.

6. Or have held commissions under the British King or Parliament.

7. Or being out of the power of the enemy, have gone to them to supply them with provisions, &c.

8. Or procuring others so to do.

9. Or having gone and continued with the enemy, without special license.

10. Or have held a correspondence with the enemy, prejudicial to these States.

11. Or have counselled or encouraged any inhabitant of these States to acknowledge allegiance to the British King or Parliament. Or,

12. To disavow the authority of the Congress, or of the Provincial Congress or Convention, or Legislature of this State. Or,

13. To disaffect any person to the independence, government and legislature of this State.

To the said disqualifications collectively considered, this Council think it their duty to object, because the constitution of this State hath expressly ordained, 'That every elector, before he is admitted to vote, shall, if required by the returning officer, or either of the inspectors, take an oath, or if of the people called Quakers, an affirmation of allegiance to this State.'[d] From whence, in the opinion of this Council, it clearly follows, that every elector who will take such oath, has a constitutional right to be admitted to such vote; and therefore, that the Legislature have no power to deprive him thereof, and more especially for acts by him done prior to the date of the said constitution, which was the 20th day of April, 1777, of which acts the Convention, by whom that Constitution was made, had ample cognizance.

Because, to punish men for acts, by laws made subsequent to the commission of such acts, hath by all civilized nations been deemed arbitrary and unjust.

Because the said bill takes away all benefit of repentance, and possibility of reconciliation from such as having, in times past, been unfriendly to the American cause, may now be good subjects of this State.

Because the said disqualifications do, in the opinion of this Council, favor too much of resentment and revenge, to be consistent with the dignity or good of a free people.

Because the said disqualifications (supposing them constitutional and proper) are not limited to take place only on the conviction of the offenders, in due course of law.

Because, as a great number of the offences, to which such disqualifications are annexed, are, by the laws of this State,

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d Const. 1777, § 8.

punishable with death; it appears to this Council improper, as well as unnecessary, to enact, that the persons thus to die, shall be so disqualified.

This Council doth particularly object to the disqualification contained in the third and twelfth articles, above specified, because, thereby all persons are disqualified who have before any committee, &c. disavowed, or have counselled others to disavow the authority of a late Convention and Council of Safety, who being as such, self constituted, and possessed of no power granted by, or derived from the people, did undertake to legislate for them, and by certain of their resolves to create capital offences.

For, that in the opinion of this Council, the people of this State, had, and have, an undoubted right to disavow and deny the authority of said Convention and Council of Safety, and to counsel and encourage others so to do.

8thly, Because, although the bill directs, that the members of the Legislature to be elected, shall meet at a certain time, therein specified; yet, no place for such meeting is thereby assigned, nor is any provision made for causing the same to be fixed and made known.

GEORGE CLINTON."

Poughkeepsie, March 25, 1778.

March 25. To the Assembly:

Objections by the Council of Revision to a bill "for raising moneys to be applied towards the public exigencies of this State." (See note 3.)

This Council object to the said bill:

"First, Because the said bill, after imposing a tax of a penny half penny in the pound, on all personal property, proceeds to assess on all traders and manufacturers in this State, a partial tax of fifty pounds on every thousand pounds, which they may respectively have gained in their said occupations, since the 12th day of September, 1776,

over and above the said general tax of one penny half penny in the pound, to be discovered by their oaths respectively.

This Council are of opinion, that an equal right to life, liberty and property is a fundamental principle in all free societies and States, and is intended to be secured to the people of this State, by the Constitution thereof, and therefore that no member of this State, can with justice be constrained to contribute more to the support thereof than in like proportion with the other citizens, according to their respective estates and abilities; wherefore this Council consider the clause in question, as being inconsistent with the spirit of the Constitution.[e]

Secondly. Because in the opinion of this Council, the public good requires that commerce and manufactures be encouraged, and regulated, and that the clause in question manifestly tends to oppress, discourage and expel all persons concerned in either; which to this Council appears the more extraordinary, as divers of the said manufactories were established by public bounties, and encouragement given as well by the Congress as by this State.

Thirdly. Because this Council can conceive of no possible reason or pretence, for this unprecedented and odious discrimination (none being assigned by the bill) unless perhaps a supposition, that the said traders and manufacturers have unduly acquired the said gains; should this have been the principle of the bill, the Council still think it difficult to suppose, that the Legislature should view every trader and manufacturer of this State, as being under that predicament, and not presume that any of them have in so long a space of time, fairly acquired one thousand pounds or more; besides this Council deem it repugnant to every idea of justice, thus without any open charges or accusation of offence, and without trial, indiscriminately to subject numerous bodies of free citizens, distinguished only by the appellation of traders or manufacturers, to large penal-

e Const. 1777, § 13. See also 1821, art. 7, § 1; 1846, art. 1, § 1; 1894, art. 1, § 1.

ties, not incurred on conviction of disobedience to any known law, and couched under the specious name of a tax.

Fourthly. Because, the bill directs that the Tax thereby imposed on appropriated unimproved lands, shall be assessed by such three of the supervisors in each county, as a majority of them shall nominate; but the Constitution of this State, doth expressly ordain, 'That assessors and all other officers, theretofore eligible by the people, shall always continue to be so eligible, in the manner directed by the then present or future acts of the Legislature."[f] Wherefore this Council are of opinion, that altho' the Legislature may constitutionally direct the manner in which the people at large shall exercise this important right, yet that the Legislature hath no authority to divest them of it and transfer it to the supervisors, nor can the Council perceive any objections to this business being done by the ordinary assessors, especially as all unimproved lands, which are now comprehended in any precinct or district, may be annexed thereto.

GEO. CLINTON."

Poughkeepsie, March 25, 1778.

March 26. To the Senate: Transmitting letters which the Governor considered important from Major General Schuyler and Col. Williams.

March 31. To the Assembly:

Objections of the Council of Revision to a bill "for raising seven hundred men, to be employed in the defence of this State." (See note 17.)

"The Council object to the said bill becoming a law of this State, because repugnant to the Constitution thereof.

It recites that the Council of Safety did by a resolution, made and passed on the 4th day of January last, revive

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[f] Const. 1777, § 29. See also 1821, art. 4, § 15; 1846, art. 10, § 2; 1894, art. 10, § 2.

certain resolutions of the Council of Safety, of the 31st day of July last, previous to which 4th day of January, the government was organized, and a Legislature consisting of a Senate and Assembly, were regularly chosen and actually existing. And by a subsequent clause of the said act declares, 'That all and singular, the powers and authorities, vested in the assessors appointed by virtue of the resolution of the Council of Safety, of the thirty-first day of July, revived and extended as aforesaid, (viz. by the Council of Safety of the fourth day of January last,) shall henceforth determine and become void.' Thereby recognizing a power in the said Council to revive and extend laws, which should by such revival continue in force till repealed; when in fact such power exists only in the Constitutional Legislature of this State.[g]

GEO. CLINTON."

April 4. A bill having been passed "to remove doubts concerning the powers of the last Convention and Council of Safety of this State, and to indemnify those who have acted under their authority respectively," a resolution was adopted by the Council of Revision and transmitted to the Assembly, in which the bill originated, requesting that such of the "said orders and resolutions of the said Convention and Council of Safety, as are in and by the said bill ratified and confirmed, and declared to be good and valid" be delivered to the Council for its information as to the scope and purpose of the bill, and to aid the Council in determining its validity. The Assembly adopted a resolution directing its clerk to attend the Council "at such time as they may direct with the minutes of the proceedings and resolutions of the last Convention and Council of Safety."

April 4. The Legislature adjourned to the second Tuesday (9th) of June, to meet at such place as the Governor, by proclamation, might assign and appoint.

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g Const. 1777, § 2.

June 9. Several members of each House met at Poughkeepsie, in response to the Governor's proclamation, but no quorum appeared until the 22d.

June 22. To the Senate: Transmitting accounts presented to the Governor by Captain Cregier, Commissary to Captain Johnson's company of rangers raised in Orange county, showing an expenditure in excess of the amount allowed by Congress. The Governor suggested that the claim be liquidated.[20]

June 22. To the Assembly:

"GENTLEMEN OF THE LEGISLATURE.—The duty of my office requires my laying before you the several papers which accompany this message, together with copies of some letters written by me, respecting the affairs of this State.

By the resolution of Congress, of the 19th of March last, you will find it (among other things) recommended to the several States, to make suitable provision for supplying their respective quotas of troops, with the necessary accoutrements. The continual waste of these articles by the accidents of war, naturally recommend a due attention to the proper means for repairing the losses thereby occasioned.[21] * * * *

The resolution of Congress, of the 22d of May last, recommending an exemption and disqualification of deserters and prisoners from military service, justly merits your attention, and a due consideration, whether it should in part, or wholly be carried into execution. It is doubtless sound policy, and a practice justifiable by the rules of war,

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[20] A concurrent resolution was adopted in the Senate on the 23d of June, and in the Assembly on the 25th, authorizing the Governor to allow an expenditure of three shillings per ration for troops called into service on the frontier.

[21] This recommendation, relative to arms, was embodied in an act, chap. 41, passed June 29, 1778, which provided for supplying Continental battalions with accoutrements.

to encourage desertions from the enemy, and it would at the same time be manifest injustice to compel prisoners into service. But the case of deserters from the regular troops of the enemy, and of those from their new levies, (which are composed of our disaffected and rebellious inhabitants) are by no means similar. To compel the former to militia service, would by exposing them to capital punishments, discourage desertions; and to encourage them to engage as volunteers, would be unsafe and impolitic; because desertions generally arise from want of principle in the men, which forbid any dependence on the integrity of such a soldier, nor can faithful service be expected from those who against principle are compelled to it. With respect to the latter, it may not be improper to consider an extension and application of the resolution to their case, would not only operate as an implicative pardon of their offences, but also as a reward for their crimes, by exempting them from those duties which good subjects owe to their Country, and thereby give just cause of umbrage to the virtuous citizen.[22]

I submit to your perusal, the establishment of the Continental Army, the resolution of Congress thereon of the 2d instant, and another of the 6th, extending the benefit of it to the militia, which may be called into Continental service. These resolutions communicated to our constituents, will naturally excite them to engage in the service with greater cheerfulness and alacrity.

The affairs of America are now drawing towards a serious and important crisis. The late treaties of amity, and commerce, between the United States of North America, and His Most Christian Majesty the King of France, on terms so distinguishedly generous, on the part of his Majesty, and so highly honorable to the United States; the

[22] An act, chap. 43, "to exempt and disqualify all deserters from the enemy not subjects of any of the United States, from serving in the militia of this State," was passed June 29, 1778.

many ignominious disappointments of our cruel enemy, and the smiles of a kind Providence on the justice of our cause, promise greatly in favor of American liberty and independence, on the most solid and lasting foundation. As the prospect of deliverance approaches, our exertions should become more vigorous. A state of security, consisting chiefly in flattering views, would have a fatal tendency to expose us to surprise, when danger is least apparent. We are to expect another active campaign, and besides discharging our public engagements in supplying our full quota of Continental troops, the militia of this State should stand cheerfully ready on the most sudden call, to reinforce the Continental Army, on the success of whose operations, depends the fate of America. Let this year then distinguish us more conspicuously than ever, for our spirited efforts in so noble, so exalted a cause. What an insidious foe has not been able to effect by arms, will now be attempted by art and circumvention; should these fail, recourse will doubtless be had again to open force. The vanity and pride of Britain will not permit her to cede the Empire of America, without one more violent effort, which can only injure us by finding us unprepared. Delusory laws of the British senate are now tendered by Commissioners, appointed for the purpose, to divide the inhabitants of these United States, and to soothe them with the specious but ruinous prospect of peace and security, whilst their fleets and armies are not withdrawn, but reinforced, and the revolted subjects joined by savages under the influence of British emissaries, are encouraged in the commission of cruel depredations on our defenceless frontier inhabitants. These laws you will readily perceive (tho' in terms designedly unexpressive) implicatively assert the absolute supremacy of Parliament, the rebellion of America, and the discretionary power of pardoning and punishing for this supposed rebellion. They are unjustly calculated to draw from America her ultimatum. They are the

forced language of imbecility for conquest; not the natural expression of desire for equality in reunion. They are formed to disarm us with a treacherous design, the more effectually to complete our ruin. Permit me therefore to recommend to your serious attention, the papers on this subject. They will serve to show you the sense of Congress, on the falacious and destructive overtures of our enemy, secure us against an unmanly and impatient anxiety for a dangerous peace, and teach us to wait without repining, for the wise result of that august body, to whom we have entrusted the important concerns of America, as the only proper rule of our conduct.

To increase the distresses of the enemy by depriving them of all supplies from the Continent, and to insure the success of our operations Congress have thought fit, by an embargo of the 8th instant, to prohibit the exportation of provision for a limited time. I submit it therefore to your consideration, whether instead of our embargo law (which was intended to prevent supplies going to the enemy from this thro' the neighboring States) some new provision ought to be substituted for permitting a commutation of necessaries between us and our sister States, and opening that free communication with them which we ought always studiously to maintain, so guarded however as effectually to prevent monopoly.

I am sorry that I am obliged to furnish you (by some of the papers herewith delivered) with the opportunity of observing that the regulation agreed on by a Convention of the States at New Haven, in January last, for the reduction of prices, so strongly recommended by Congress, has not obtained the approbation of all the States. It behooves the Legislature to consider, how far a partial regulation obligatory on the inhabitants of this State, may be injurious to its welfare, and inadequate to the design of imposing it; and consequently what new provisions ought to be made on a subject of so much importance. Permit me to observe,

that should this regulation prove abortive, the necessity of calling out of circulation, our emission of State money by taxes, and other means will become more cogent, and to recommend this matter to your most serious attention. [See note 14.]

You will be able from papers herewith delivered to you, to see what effect the proclamation founded on the concurrent resolutions of the Senate and Assembly has had, as well on the designing and the deluded inhabitants, who aim at independency, under the title of the State of Vermont, as on the well affected subjects in that part of the State. In the judgment of the disinterested, all claims on the justice, and even on the generosity of this State, have been fully satisfied. From a perusal of those papers, you will also discover how strenuously I have pressed for an express and unequivocal declaration of the sense of Congress, on that important subject; and as this matter has in consequence of my application, been referred to a special committee, I offer it as worthy your deliberate consideration, whether the result of Congress ought not to be patiently expected before any coercive steps be taken, to reduce the delinquents to a proper sense of their duty. [See note 13.]

GEO. CLINTON."

Poughkeepsie, June 22, 1778.

June 30. The Legislature adjourned without day.

THE VERMONT CONTROVERSY.

The message of February 6, relating to Vermont, was referred to a joint committee of the two houses, which made a report reciting with some detail the history of the various claims to that part of the State within the disputed district, and recommending the following action:

"First. That all persons actually possessing and improving lands, by title under grants from New Hampshire

or Massachusetts Bay, and not granted under New York, shall be confirmed in their respective possession.

Second. That all persons actually possessing and improving lands, not granted by either of the three governments, shall be confirmed in their respective possessions, together with such additional quantity of vacant land, lying contiguous to each respective possession, as may be necessary to form the same into a convenient farm; so as the quantity to be confirmed to each respective person, including his possession, shall not exceed three hundred acres.

Third. That where lands have heretofore been granted by New Hampshire, Massachusetts Bay, or either of them, and actually possessed in consequence thereof, and being so possessed, were afterwards granted by New York, such possessions shall be confirmed, the posterior grant under New York notwithstanding.

Provided always, That nothing in the above resolutions contained, shall be construed to determine any question of title or possession, that may arise between different persons claiming under New Hampshire or Massachusetts Bay, or between persons claiming under New Hampshire on the one and under Massachusetts Bay on the other part, independent of any right or claim under New York.

Fourth. That with respect to all such cases, concerning the aforesaid controverted lands, as cannot be decided by the rules exhibited in the aforegoing articles, or some or one of them, the Legislature of the State of New York will provide for the determination of the same, according to the rules of justice and equity arising out of such cases respectively, without adhering to the strict rules of law.

Fifth. That in all cases where grants or confirmations shall become necessary on acceptance of the above overtures, such grants or confirmations, shall issue to the grantees, at and after the rate of five pounds for a grant or confirmation of three hundred acres or under, and for every additional hundred acres, the additional sum of sixteen shillings, except in cases, wherein lands shall be granted or confirmed to divers persons in one entire tract, in which case the grants shall issue, respectively, for fifteen pounds each, which allowances shall be in lieu of all other fees or perquisites whatsoever.

Sixth. That wherever, agreeable to the above regulations, new grants or confirmations shall become necessary under this State, for lands heretofore granted by New Hampshire or Massachusetts Bay, the same quit rent only shall be reserved, which was reserved in the original grants, under New Hampshire or Massachusetts Bay.

Seventh. That where lands heretofore granted by New Hampshire or Massachusetts Bay have been since confirmed to such grantees by new grants under New York, the quit rents reserved on such lands, shall be reduced to what they were in the original grants, under New Hampshire or Massachusetts Bay.

Eighth. That in order to encourage the settlement of the aforesaid disputed lands, a peaceable subjection to the authority and jurisdiction of this State, and also of all other lands, held within and under this State, the following commutation for the quit rents shall be allowed, viz. That on payment, at the rate of two shillings and six pence lawful money of this State, into the Treasury of this State, for every penny sterling of quit rent reserved; or on delivery into the same of seventeen times the quantity of grain, or other commodity reserved for such quit-rent, the same shall thence forward be utterly discharged, and forever cease and be extinguished."

It was expressly provided that the concessions and privileges contained in the foregoing overtures should not apply to any person, who after the first day of the following May, should "yield or acknowledge any allegiance or subjection to the pretended State of Vermont, the pretended government thereof, or to any power or authority pretended to be held or exercised thereunder."

These overtures with resolutions to carry them into effect were agreed to by both Houses on the 21st of February. Another message on this subject was sent to the Assembly on the 22d of June.

GEORGE CLINTON, Governor.

September 1, 1778, Governor Clinton issued a proclamation convening the Legislature at Poughkeepsie on the 1st of October. A quorum appeared in both Houses on the 13th, and that day the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—The enemy, by the evacuation of Philadelphia and their removal to the city of New York, have again made this State the principal seat of war. I am happy, however, to inform you that instead of effecting the conquest of the United States of America, their main army, after several fruitless campaigns, on their part barbarously and cruelly conducted, is at length, through the vigilance of his excellency General Washington and the spirit and bravery of the troops under his command, confined to defensive operations only; and there is the greatest reason to hope that with the blessing of a kind Providence, we shall be enabled speedily to bring the war to a happy and honorable conclusion and perfectly establish our freedom and independence.

Our northern frontier has this season remained in a state of tranquillity, and the inhabitants thereby been favored with an opportunity of recovering in some measure from the extreme distress to which they were reduced by the operations of the last campaign.

I am, at the same time, Gentlemen, unhappy to inform you of the ravages committed on the western frontier, and the destruction and desolation of several valuable settlements in the counties of Tryon, Albany and Ulster by the

savages, in conjunction with the disaffected subjects of this and the neighboring states. On the first appearance of hostilities in that quarter, I ordered into actual service a considerable part of the militia for the protection of the exposed inhabitants, but every exertion I have been able to make for their security, though burthensome to the militia and very expensive to the public, has (owing to the extent of the country to be guarded against an enemy carrying on a desultory war) proved ineffectual.

The disaffection and turbulent conduct of many of the inhabitants of the northeastern district of this state will claim your attention and call for such measures as justice, the public good and the honor of the state may demand.[1]

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[1] The Vermont controversy received considerable attention during the last session of the Legislature. The Assembly in its address presented to the Governor on the 16th of October, 1778, made the following observations on this subject:

"It is with the greatest concern, we learn from your Excellency, that disorders still prevail in the Northeastern parts of the State. We hoped that the inhabitants, in that part of the country, after the present government of this State, had so evidently testified a disposition to satisfy every claim, consistent with justice, would at least have made overtures towards an accommodation. That from a consciousness that they might safely have confided in us for a redress of their grievances they would have relinquished the scheme of separating from us; a scheme so unjust with respect to the rest of the community, so subversive of all government, so peculiarly injurious at this crisis, to the common cause of America; and if persisted in, so ruinous and destructive to themselves; for we solemnly assure your Excellency, that tho' we are willing, and we conceive we speak the general sense of our constituents, that the controversy, relative to the right of soil, should be determined upon the most enlarged principles; yet that we are resolved, at every hazard, to maintain the jurisdiction of the State, throughout the whole of its territory. Little will avail our resistance to a foreign enemy and domination; unless we can by enforcing a due subordination to government, establish peace and good order among ourselves."

The Legislature at this session adopted concurrent resolutions, which among other things, after referring to the resolutions adopted at the previous session, again confirmed the grants in the disputed territory made by New Hampshire or Massachusetts, though no grants had been obtained by New York, and declared that such grants should not be deemed void by reason of the nonperformance of any conditions prescribed therein. The Governor was requested to issue a proclamation, setting forth the resolutions adopted, provide for their distribution in the disputed territory, and pledge the faith of the Legislature to the full performance of the matters contained in the resolutions.

GENTLEMEN OF THE LEGISLATURE.—As the terms for which the present delegates in Congress and members of the Council of Appointment for this state were elected are expired, it will, of course, be your first business to proceed to the election of proper persons to fill those important offices.[2]

The continued depreciation of the paper currency is a circumstance of the most alarming nature. Temporary expedients, such as laws for the reduction of prices, though they may serve for a time to paliate, will in the end be found to increase the evil. The only effectual remedy is that of reducing the quantity of circulating currency by taxation; a measure which I would wish to recommend to your particular and early attention, for, exclusive of every other consideration, no time can be more proper than the present for paying off our public debts by taxes, when the staple commodities of the state command the most advanced prices.[3]

By the 35th section of our constitution the laws of this state are necessarily become complicate, and as every member of society is materially interested in the knowledge of the laws by which he is governed, I am induced to believe a careful revision of the laws of this state would be an acceptable service to your constituents, and attended with the most salutary effects.

In the course of the war, this state has frequently been charged by congress with the superintendence and management of various kinds of public business, in the prosecution of which large disbursements have been occasionally

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[2] The Legislature, on joint ballot, elected delegates to Congress, and the Assembly elected a Council of Appointment as required by the Constitution.

[3] On the 2d of March, 1779, an act was passed, chap. 16, providing a general tax to be applied towards the public exigencies of this State. The first bill for this purpose was vetoed by the Council of Revision. An act passed February 26, 1779, chap. 15, provided for cancelling all bills of credit for one dollar or under, issued under the authority of the Provincial Congress or of the State.

made, and notwithstanding the advances by congress, I am informed a very considerable balance remains due to this state, and, as new accounts are daily accruing, some proper and permanent mode for the liquidation and settlement of the public accounts of this state is become necessary.

You will readily perceive, from the nature of the service, it is not in my power to render you an account to any fixed period of the expenditures made in the payment and subsistence of the militia, who have been employed on the frontiers. I have great reason to believe that they far exceed the sum allowed by the legislature for this purpose, and have therefore to recommend that provision be made, not only for discharging the extra debts that may have been contracted for this service, but also for enabling me to execute more effectual measures for the defence of the frontier settlements against the depredations of a savage enemy in future.[4]

GENTLEMEN.—There are many other matters worthy of the deliberation of the legislature, which in the course of the session I shall occasionally take proper opportunities of laying before you.

Your zeal for the public welfare, as well as the duty you owe to your constituents, will, I am persuaded, induce you to prosecute the business of the present session with that unanimity and firmness which become the representatives of a free and virtuous people; and the necessity there is (during the unsettled state of our public affairs) for your presence in the several counties in which you reside will equally excite you to dispatch.

GEO. CLINTON."

Poughkeepsie, October 13, 1778.

[4] An appropriation act, chap. 7, passed November 4, 1778, placed twenty thousand pounds at the disposal of the Governor for the expenses of the militia when called into actual service for the defense of the State. Another act, chap. 13, passed February 17, 1779, revived a statute authorizing the Governor to direct the issuing of clothing, stores and other necessaries therein mentioned.

SPECIAL MESSAGES.

October 16. Thanking the Assembly for its address.

October 16. To the Assembly:

"GENTLEMEN OF THE LEGISLATURE.—With this message I submit to your consideration, the copy of a letter from his Excellency George Washington, dated Fredericksburgh, September 22, 1778, representing the difficulties that attend the obtaining of a sufficient quantity of forage for the use of the army; together with copies of two letters, dated the 6th and 10th of the same month, from Colonel Biddle, Commissary of Forage, and Charles Pettit, Assistant Quarter Master General, on the same subject; and a representation of Royal Flint, Assistant Commissary General of Purchases, containing a state of the public magazines, and the difficulties he labors under in procuring the necessary supplies of flour and wheat, for the consumption of the army, together with a copy of a letter from the Common Council of the City of Albany, setting forth the distresses that threaten the inhabitants of that city, from the conduct of engrossers and monopolizers of flour and wheat.[5]

GEO. CLINTON."

Poughkeepsie, October 16, 1778.

October 17. To the Senate:

"GENTLEMEN.—I take this method of presenting to the Legislature, for their consideration, the memorial of John Beebe, Philip Trisbe and others, in behalf of themselves

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[5] An act was passed October 31, 1778, chap. 5, "more effectually to provide supplies of flour, meal and wheat for the army," and another act, passed March 5, chap. 21, provided for procuring an immediate supply of flour for the army.

The Senate adopted a resolution expressing the opinion in substance that this subject could not be adequately regulated by statute, and recommended that General Washington be requested by the Governor to set on foot an inquiry for the purpose of ascertaining what wheat and flour had been purchased by the commissaries, and how the same had been applied.

and their associates, inhabitants of King's District in the County of Albany, with a state of their cause to which it refers.

And also, a paper, signed by a number of the inhabitants of Peinpack on the western frontier of Ulster County, and requesting that a company of rangers be raised for their protection; together with copies of two letters which I have received, giving an account of some late depredations committed by the enemy in that quarter.

GEO. CLINTON."

Poughkeepsie, October 17, 1778.

October 18. To the Assembly:

"GENTLEMEN.—You will receive with this message, an extract of a letter from the Honorable William Duer and Gouverneur Morris Esquires, two of the delegates of this State, informing, that they have obtained from Congress, an advance of one hundred thousand dollars, for the use of this State, and for which it is to be accountable. This money, for want of a safe opportunity of conveying it to the treasury, remains in the hands of the delegates; and it appears to me necessary that a method should be devised for having it brought forward, or that some other proper disposition be made of it.

For the information of the Legislature, you will herewith also receive the returns of clothing, now in the public stores of this State, and of the late issues, and the deficiencies; with a copy of a letter from Peter T. Curtenius, Esquire, one of the Commissaries, which, as it points out the inexpediency of the present mode of obtaining supplies, merits the early attention of the Legislature.

A copy of a resolution of Congress of the 8th of September, 1778, respecting the clothing of the army, will also be herewith delivered to you.

GEO. CLINTON."

Poughkeepsie, October 17, 1778.

October 22. Thanking the Senate for its address.

October 22. To the Senate:

"GENTLEMEN.—This message is accompanied with a copy of a resolution of Congress, of the 12th instant, which, as it is intended for the encouragement of religion and good morals, cannot fail engaging the particular attention of the Legislature.

GEO. CLINTON."

Poughkeepsie, October 22, 1778.

The following is the copy of the resolution:

"IN CONGRESS, *October* 12, 1778.

"*Whereas,* true religion and good morals are the only solid foundation of liberty and happiness; *Resolved,* That it be, and it is hereby earnestly recommended to the several States, to take the most effectual measures for the encouragement thereof, and for the suppressing of theatrical entertainments, horse racing, gaming, and such other diversions as are productive of idleness, dissipation and a general depravity of principles and manners."

October 28. To the Senate:

"GENTLEMEN.—In addition to the papers accompanying my message of the 16th instant, representing the difficulties in obtaining supplies of flour and forage for the use of the army; I now transmit to the Legislature the copy of a letter, which I have since received from his Excellency General Washington, on the same subject; and a letter from Colonel Hay, Deputy Quarter Master General, which also merits the consideration of the Legislature. (See note 5.)

You will also, herewith, receive the copy of a resolve of Congress of the sixteenth instant, which is offered merely as a matter of information.

GEO. CLINTON."

Poughkeepsie, October 28, 1778.

October 31. To the Senate:

"GENTLEMEN.—As the moneys, heretofore granted by the Legislature for supplying the five Continental Battalions, raised under the direction of this State, with necessaries, are nearly expended, I have to recommend that a further provision be made for this service. A letter from Mr. Currie, on this subject, will be herewith delivered to you for your better information.[6]

I also, with this message, refer to the consideration of the Legislature, sundry pay rolls for services performed by the militia, at the request of the Civil Magistrate, which, however reasonable they may appear to be, I do not conceive myself authorized by law to discharge.

GEO. CLINTON."

Poughkeepsie, October 31, 1778.

November 1. The Senate, on motion of Sir James Jay from the Southern District, adopted the following resolution:

"*Resolved,* That his Excellency be requested to communicate to this Senate, the information he may have received, respecting the introduction of goods and merchandises from the enemy into this State, by means of flags of truce or otherwise, and how the same have been disposed of; and also, what information he has received of the seizures that have been made, and from whom, by virtue of the embargo law."

November 2. The Governor, in response to the foregoing resolution, sent the following message to the Senate:

"GENTLEMEN.—In compliance with the request contained in your resolution of the first instant, communicated to me by the Honorable John Morin Scott and Sir James Jay, two of your members, I now communicate to you all the official information I have received, respecting the sub-

[6] Further provision for army supplies was made by chap. 4, passed October 30, 1778.

ject of your inquiry: general reports, resting only on the evidence of common fame, I presume, make no part of the information requested of me.

In September last, Samuel Hake, a prisoner, taken in a vessel bound from Britain to New York, obtained a flag from his Excellency General Washington, with my consent, to go to New York, for the purpose of removing his books, papers and household furniture from thence to the interior part of this State. While in New York, he put a quantity of goods and merchandises on board a sloop, which had been sent with a flag to New York with a number of Tories, and was then returning; these goods were landed at or near Rhynebeck, but to whom they were consigned, or how disposed of, I have no information, except hearsay and common report.

In October last, the said Samuel Hake, being still in the city of New York, put another parcel of goods and merchandises on board a vessel which was coming up the river with a flag from the enemy, in which he came passenger. On the arrival of this vessel at King's Ferry, I made Mr. Hake a prisoner, and confined him on his parole. I stationed an officer on board the vessel, with orders not to permit the goods to be landed, and gave directions that the vessel should return with them to New York.

There have also been several instances of persons in New York having sent out small quantities of different articles to their families and friends in the country by the return of flags; this practice cannot be effectually prevented, without a proper law for the purpose.[7]

As to seizures made by virtue of the embargo law, the magistrates, authorized to make these seizures, are not directed by law to make returns, or give me any information respecting them. I can, therefore, communicate to you, no

[7] An act passed March 8, 1779, chap. 28, was intended to prevent "abuses in flags of truce," and contained provisions for the seizure and disposition of property brought into the State without permission from the proper authorities.

other intelligence on this subject, than what arises from reports, the credit of which is not yet ascertained. From these reports, however, there is reason to suspect, that the embargo law has, in many instances, been violated, and that a proper and full inquiry into these abuses may be of public utility.

GEO. CLINTON."

Poughkeepsie, November 2, 1778.

November 5. To the Assembly:

Objections by the Council of Revision to a bill "for raising a further sum by tax to be applied towards the exigencies of this State."

"The Council deeply impressed with an opinion of the expediency of levying a general tax, regret the necessity imposed on them by their duty of objecting to this bill, and the more so, as only one single clause in it appears to them exceptionable.

The said bill after imposing a general and equal tax, of a penny half-penny in the pound, upon all personal property within this State, proceeds as follows:

'*WHEREAS* many persons in this State, taking advantage of the necessities of their country, have in prosecuting their private gain, amassed large sums of money, to the great prejudice of the public, and ought therefore to pay an extraordinary tax; and it will be impossible for the assessors with any degree of certainty, to ascertain the profits made by such persons in manner aforesaid;

BE IT THEREFORE ENACTED BY THE AUTHORITY AFORESAID, That the Assessors shall, and are hereby required to assess all such persons respectively, whether fixed residents of this State, or residing therein occasionally, for the purpose of any trade, commerce or traffic, for their faculty, or the means that have been used by them respectively, for enriching themselves at such rates

respectively, over and above the assessment hereby required on their real and personal estates respectively, as they the Assessors, shall in their judgment think proper, which assessment last aforesaid, shall be included in the personal tax lists, and shall in all things in and previous to the levy thereof, be subject to the regulations herein above prescribed, respecting the personal tax lists.'

The Council object to this clause as being in their opinion, inconsistent with the spirit of the Constitution.

1st. Because an equal right to life, liberty and property, is a fundamental principle in all free societies and States, and is intended to be secured to the people of this State, by the Constitution thereof, and therefore no member of this State, can constitutionally or justly be constrained to contribute more to the support thereof, than in like proportion with the other citizens, according to their respective estates and abilities.[a]

But if the Council should admit (which they do not) that this principle is false, and that unequal taxation is justifiable, yet they are of opinion, that whenever the Legislature imposes a tax on a man for his faculty or means of acquiring property, they are supposed to mean only those faculties or means which are lawful, because to tax a faculty is to tolerate it. Vice not being in its nature a subject of taxation, and yet it appears on the face of this bill, that the faculty thereby taxed, is the faculty of taking advantage of the distresses of the country, and amassing large sums of money to the prejudice of the public. With equal propriety might the like extraordinary tax have been imposed on the faculties of making money by gaming, keeping disorderly houses, false swearing, lying and slandering, all which vices like those mentioned in the bill, are injurious to the common weal, and like them ought to be punished, not taxed.

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[a] Const. 1777, § 13. See also 1821, art. 7, § 1; 1846, art. 1, § 1; 1894, art. 1, §§ 1, 6.

2d. Because as the bill assigns the demerits of the several persons described in the clause under consideration, as the reason for their being subjected to this extraordinary assessment, it would seem as if the Legislature intended thereby to punish them. The clause viewed in this light, is still exceptionable, because, however proper it may be, to punish these practices, yet the manner of doing it prescribed in this clause, is in the opinion of the Council unconstitutional.

By the principles of the Constitution, of this and every other free State, except in cases of attainder for high and dangerous crimes and misdemeanors, no citizen is liable to be punished by the State; but such as have violated the laws of the State, and every citizen is to be considered as innocent by the State, until he hath broken its laws, offences only against the moral law or laws of God, being cognizable by him alone. Supposing therefore, that the persons aimed at in the bill, have acquired riches immorally, yet if they have acquired them in a manner, which the Legislature has not thought proper to prohibit, they are not obnoxious to human punishment, however liable they may be to divine vengeance. But if on the other hand, these persons have acquired riches, in a manner prohibited by the law of the land, they ought to be tried and punished in the way directed by these laws, and not subjected to double punishment, first, in the usual course of justice, and secondly by this extraordinary tax, imposed by an act, made subsequent to the commission of the offence, and that too without any other trial than what the assessors, who are not authorized by the Constitution to distribute justice, may think proper to give them.[b]

3d. Because the Legislature are not authorized by the Constitution, to delegate the right of determining at discretion, how much money shall be levied on all or part of the people to any body of men whatever, much less to the

[b] Const. 1777, § 41.

assessors; it being the proper business of the Legislature to ascertain and declare the rate at which the people shall be taxed, and of the Assessors, to determine only the value or amount of the property of each individual, and by comparing that amount with the rate, to compute, not appoint how much each person is to pay. And yet the bill refers it entirely to the discretion and judgment of the assessors, to determine how much or how little the persons described in it, shall be taxed for their faculties or means of getting money. Nor is the reason assigned for this in the bill of any weight, viz. 'That it is impossible for the assessors with any degree of certainty, to ascertain the profits made by such persons.' The assessors cannot with greater degree of certainty, ascertain the amount of many personal estates in the country, and yet the bill obliges them to assess these estates a Penny Half-Penny in every pound they consist of.

The Council further object to the above recited clause in the said bill, as being in their opinion, inconsistent with the public good.

1st. Because, should the Legislature exercise a power, and go into the practice of taxing people, not according to the value and amount of their respective estates, but the particular manner in which they were acquired, all security for property will be at an end; No man being able to foresee, whether the particular manner in which he legally acquires his estate, will at a future day be disapproved by the Legislature and destroyed by extraordinary assessments. So that should this principle and practice obtain, the people would hold their estates not by the constitution and law of the State, but the mere will of the legislature, and mercy of the assessors.

It is an undoubted right of a freeman (whatever ill use he may make of it) that where no prices are fixed by law, he is at liberty to ask what price he pleases for his lands or goods, and he is amenable only to God and his conscience,

if he asks too much. To subject him therefore, to an extraordinary tax, limited only by the discretion of an assessor, merely because he happened to dispose of his property, at a price which the Legislature think (but did not declare) to be unreasonable, would in the opinion of the Council, be an invasion of the rights of the people and a dangerous precedent.

2d. Because the description of the persons subjected to this extraordinary tax is so uncertain, as that the Assessors will have scarce any other rule than mere opinion or caprice to direct them; a circumstance which in penal laws, (which are always to be construed strictly) should be carefully avoided. The Bill declares, that many persons in the State, taking advantage of the necessities of their country have, in prosecuting their private gain, amassed large sums of money to the great prejudice of the public, and then enacts, that the assessors shall assess all such persons at such rates, over and above the general assessment, as they the assessors shall in their judgment think proper. This description gives birth to the following doubts.

1st. Whether it includes all persons in the State who have ever amassed large sums of money in this way, or only such as have done so within late years, and if the latter, within what time.

2d. What is to be deemed a taking advantage of the necessities of the country, because all the people in this State, who had anything to sell, have so far taken advantage of the necessities of those who are obliged to buy, as that no commodity can now be purchased for less than five times as much as before the war.

3d. How many hundred or thousand pounds are the assessors to deem a large sum of money, those only who have made large sums being subject to extraordinary tax.

4th. What quantum or species of prejudice to the public, comes within the description of the words great prejudice

to the public, for the bill limits the assessment of those only, who have done great prejudice to the public.

It is to be observed, that the description in the Preamble is adopted by the enacting clause, and is therefore to be considered as part of it.

5th. Because every man whom the assessors shall judge to come within the above description, will be most essentially affected by it, he will be held up to his fellow citizens as in a certain degree infamous, and the whole or great part of his estate may be taken from him. Wherefore in the opinion of this Council, no freeman of this State ought to be condemned to such extensive evils, without having been previously found to deserve them on a fair and solemn trial, a trial which every assessor (not being obliged to give) may not be disposed to grant, or indeed be competent to hold. Besides, the bill does not direct the assessors to give the party any trial at all, but leaves them to make up their judgments, on any evidence or principles they may think proper. Hence the assessors will have an opportunity of subjecting the most innocent persons in the State to destruction, in every case in which they may be inclined thereto, by caprice or malice.

6th. Because, altho' great injuries may be done to innocent persons by assessors under this bill, yet no appeal lies, by the bill, from their judgments. The Supervisors may perhaps direct them to reconsider it, but they may still, if they please, abide by it, and in that case the supervisors must see it executed.

7th. Because this unprecedented extraordinary tax will induce all who may fear the operation of it, to remove with their property to some other State, which will give them greater security for the enjoyment of it, whereby many citizens and large sums of money, which in the ordinary constitutional way of taxation, would yield a very considerable revenue to the State, will be lost, nor will

strangers be easily persuaded to settle in a State whose citizens find it necessary to remove from it.

8th. Because, altho' the practices of many persons concerned in trade, and in buying and selling, may be injurious to the public weal, yet in the opinion of this Council, these practices call rather for general and prudent regulations, to prevent the evil in future, than for such indiscriminate and unconstitutional modes of punishment, by ex post facto laws. GEO. CLINTON."

The bill was not passed over the veto.

November 6. The Legislature adjourned to the 12th of January, 1779; a quorum appeared in the Senate on the 27th, and in the Assembly on the 28th.

1779. January 28. To the Assembly:

"GENTLEMEN OF THE LEGISLATURE.— I take the earliest opportunity afforded me, of laying before you the resolutions of Congress, of the 2d instant, on the subject of finance among other matters, calling upon the different states for their respective quotas of fifteen millions of dollars in the present year, and of six millions of dollars annually, for eighteen years thereafter, as a fund for sinking the loans and emissions of these United States, to the thirty-first day of December, 1778, inclusive; with their resolutions of the 5th instant, fixing the said quotas. As the objects of these resolutions are to prevent the necessity of further emissions of paper money, to restore the credit of the paper currency, and ultimately to discharge the public debts, it is of the first importance, that proper measures be speedily taken, for effectually carrying them into execution. You will also herewith receive an act of Congress, of the 26th of September last, for organizing the public treasury, among other resolutions, recommending to the several States to enact laws for the taking of such persons, and also to seize the property of persons, who,

being indebted to the United States, shall neglect or refuse to pay the same. And an act of the first instant, recommending to the several States, to adopt such measures, as may be effectual for detecting persons employed in making counterfeit bills, or passing the same, knowing them to be such.[8]

GEO. CLINTON."

Poughkeepsie, January 28, 1779.

January 29. To the Senate:

"GENTLEMEN OF THE LEGISLATURE.—I herewith submit to your consideration copies of three letters, dated the 11th of November, from a Committee of Congress, appointed to superintend the Commissary and Quarter Master's Departments; requesting the aid of the Legislature in correcting abuses committed in those departments, and for punishing the offenders; and for enabling Congress to acquire a knowledge of the resources of this State with respect to supplies for the army; and, also, a letter of the 20th instant, from Colonel Udny Hay, Deputy Quarter Master General at Fishkill, representing the difficulties he experiences in the execution of his office, and the consequent distresses of the soldiery. Permit me to add, Gentlemen, that, from the best information I have been able to obtain, the division of the army, under the command of Major General M'Dougall, on which our present security, against the incursions of the enemy, depends, subsists on a precarious supply of provisions, daily procured for them; and there is the greatest reason to fear, they will be obliged to abandon their present posts, and retire into the interior parts of the country. The present difficulties under which the Army labors, you will observe, are imputed by the Quarter Master General, to the want of the necessary number of teams for the transportation of provision to the camp, and for other services;

[8] An act passed March 8, 1779, chap. 25, made the counterfeiting of bills of credit a felony, without benefit of clergy.

owing, in a great measure, to defects in the law for regulating impresses. I would, therefore, recommend the making of such amendments in that law, for enlarging the powers vested in the ordinary magistrate, as to render it more adequate to the purposes for which it was intended.[9]

GEO. CLINTON."

Poughkeepsie, January 28, 1779.

January 29. To the Assembly:

"GENTLEMEN OF THE LEGISLATURE.—It affords me particular pleasure, to have it in my power to transmit you copies of the treaties of amity and commerce, and of alliance eventual and defensive, between his Most Christian Majesty, [the King of France] and these United States. As they are evidently founded on principles equally beneficial to both countries, and evince the justice as well as good policy of our great and generous ally, they cannot fail of affording your constituents the highest satisfaction.

With this message will also be delivered to you, merely for your information, several acts of Congress, of the 26th of August, 1776, and 25th September, 1778, and of the 24th November, 1778; and also a copy of a printed pamphlet, entitled, 'Extracts from the Journal of the House of Representatives of the State of Vermont,' with copies of several other papers respecting the disaffected subjects in the northeastern parts of this State.

GEO. CLINTON."

Poughkeepsie, January 28, 1779.

January 30. To the Senate:

"GENTLEMEN OF THE LEGISLATURE.—At a Court of Oyer and Terminer and General Gaol Delivery, lately held for the County of Orange, Amy Augur, late Amy Jones, was convicted of the murder of her male bastard child, upon an

[9] This suggestion was incorporated in an act, chap. 32, passed March 12, relative to impresses of forage and carriages.

indictment founded upon the statute of James the First; She was to have been executed, agreeable to the sentence, on the 22d instant. On the representation of the Court in her favor, as a proper object of mercy, (a copy of which will be herewith delivered) I thought it my duty to suspend the execution till the 20th of March next, thereby to have it in my power to submit her case to the legislature for their direction.[10]

GEO. CLINTON."

Poughkeepsie, January 30, 1779.

February 2. To the Assembly:

"GENTLEMEN OF THE LEGISLATURE.—I submit to your consideration, a letter from his Excellency Governor Greene, of the State of Rhode Island, &c. dated the seventh instant, wrote by direction of the General Assembly of that State, representing the great scarcity of bread there, and requesting that the law of this State, imposing an embargo, may be so far dispensed with, as to permit the necessary supply of flour and corn, for the immediate use of their inhabitants, to be transported by land from this into that State.[11]

GEO. CLINTON."

Poughkeepsie, January 30, 1779.

February 3. To the Assembly: Transmitting several acts of Congress relative to finance.

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[10] The First Constitution, article XVIII, vested the pardoning power in the Governor, except in cases of treason and murder, "in which he may suspend the execution of the sentence, until it shall be reported to the Legislature, at their subsequent meeting, and they shall either pardon, or direct the execution of the criminal or grant a further reprieve." The Legislature exercised this power in the Augur Case, and by an act, chap. 9, passed February 17, 1779, granted a full pardon to the defendant, who had been convicted of murder. The pardon was granted on the suggestion, as stated in the Preamble, that the conviction was occasioned by the nonattendance of a material witness on the trial. This was the first pardon granted by the Legislature.

[11] For note on the export of provisions, see *post*, p. 72.

February 8. To the Senate:

"GENTLEMEN OF THE LEGISLATURE.—I herewith transmit you an act of the Legislature of the State of New Hampshire, for preventing the return to that State, of certain persons therein named, and of others, who have left, or shall leave that State, or either of the United States of America, and have joined or shall join the enemies thereof. And also, a letter from the Honorable Jeremiah Powell, Esq. President of the General Assembly of the State of Massachusetts Bay, which I received yesterday, representing the distresses that the inhabitants of the town of Boston are likely to experience, from the scarcity of wheat and flour, and requesting permission to export three thousand barrels of flour from this State, for their immediate relief. [See note 11.]

GEO. CLINTON."

Poughkeepsie, February 8, 1779.

February 13. To the Senate: Transmitting a copy of resolutions adopted by the Executive Council of Pennsylvania, accompanied by a letter from the President of the Council.

February 18. To the Senate:

"GENTLEMEN OF THE LEGISLATURE.—I submit to your consideration a resolution of Congress of the 8th instant, directing the President to write to the Governors of the States of Connecticut and New York, requesting them to afford such supplies of flour and provisions for the distressed inhabitants of the State of Rhode Island and Providence Plantations, as their necessities call for, so far as their circumstances will admit, and under such regulations as may best answer the ends proposed; with a copy of his Excellency the President's letter on the subject. [See note 11.]

GEO. CLINTON."

Poughkeepsie, February 18, 1779.

March 2. To the Assembly: Transmitting accounts of expenditures made by him under the authority of the Legislature.[12]

March 5. To the Assembly: Transmitting petitions from the inhabitants of Tryon county, and of Marbletown and Rochester in Ulster County, representing the exposed situation of the western frontier of this State.[13]

March 14. To the Assembly:

Objections by the Council of Revision to a bill "for forfeitures and confiscations, and for declaring the sovereignty of the people of this State, in respect of all property within the same."

After objecting to various provisions relating more especially to procedure, the Council say:

"They object to the second clause of the bill, because it is directly contrary to the spirit of the Constitution, and to the attention which is due to the rights of the subjects of this State.

After reciting that a number of persons, therein mentioned, who were dead at the time of passing the act, had been guilty of treason during their lives, it forfeits the estate real and personal, of which they or either of them, were severally and respectively seized on the 9th of July, 1776. As this clause affects the heirs, executors, administrators, or legatees of the persons named, who, being charged with no crime, the law will presume to be good subjects of the State, and in whom the property intended to be forfeited has legally vested; to divest them of it by a law of the State, without hearing, is to erect the Legislature into a new Court of Judicature, not proceeding according to the course of the common law; and to deny to the subjects of this State, the benefit of a trial by jury, to which

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[12] The salaries act, chap. 34, passed March 13, 1779, appropriated various sums to the Governor for expenses incurred by him.

[13] An act, chap. 33, was passed March 13, 1779, which provided for raising one thousand men for the defence of the frontier.

they are entitled, "in all cases in which it hath heretofore been used in the Colony of New York."[c] For, tho' the constitution admits of acts of attainder under certain restrictions, yet this clause can neither be considered as within the letter or the spirit of such admission. It is not within the letter, because it contains no words of attainder or conviction, nor within the spirit, since it does not punish the traitor, but imposes hardships upon the innocent. If however the Legislature could legally pass such laws, still as this has a tendency to deprive widows and fatherless children of their property, it ought to have been drawn with peculiar caution. It should have alleged the particular treason of each individual, and the time when committed; in order that the heir, or legal representative, might have been enabled, at some future day, to prove, (if such was the fact) that the legislature had not been fully informed.

The ninth clause of the said bill, forfeits the real property, rents, arrearages of rents, &c. belonging to the inhabitants or subjects of Great Britain, on the ninth day of July, 1776, or since. To this the Council object:

1st. Because it is impolitic and repugnant to the strict rules of justice. Civilized nations, before a Declaration of War, give notice to the subjects of the States with whom they are at variance, to remove their property. The reason operates more strongly at this great Revolution, from the close connection which heretofore subsisted between this State and the now subjects of Great Britain, who, if not unfriendly in their conduct should be admitted to dispose of their estates, or what better policy would dictate, to settle on them.

2d. Because it injures the national character of the State, may occasion reciprocal forfeitures, and lessen the emigrations of people of property from the British dominions, from whose imported wealth greater advantages might be

[c] Const. 1777, § 41.

expected, than from the pittance produced by the sale of their lands.

3d. Because it makes an ill return for the spirit and liberality with which our cause has been defended by many worthy patriots in the British dominions;— the provisionary clause in their favor, being merely nugatory, promising nothing certain, and requiring proofs which it may be difficult or dangerous for the subjects of another power to make.

4th. Because it is vague and uncertain, the words inhabitant or subject, in the disjunctive, admitting of very great latitude; under the last of which names may be comprised, every inhabitant of this country, born in the British dominions, who has not by some decisive act, renounced his former allegiance to the King of Great Britain, and perhaps every other person within the enemy's protection, however involuntarily he may be so."

The bill was not passed over the veto.

March 15. To the Senate: Announcing a visit of delegates from Massachusetts Bay, to represent to the Legislature the distressed situation of the inhabitants of that state, caused by scarcity of flour and grain. (See note 11.)

March 16. The Legislature adjourned to the 1st of June, to convene at a place to be designated by the Governor, but the Legislature was not convened again during the term of that Assembly.

EXPORT OF PROVISIONS.

February 11, 1779, the Legislature adopted the following concurrent resolution:

"*Resolved,* That in the year 1777, the Northern frontier of this State, from Ticonderoga to within a few miles of the City of Albany, was by the invasion of the enemy, and the military operations on the part of these States to repel them, laid waste, and the farmers not only prevented from gathering in their harvest, but also from putting seed in

the ground for a crop the following year; and that the inhabitants in that quarter must, until the ensuing harvest, procure their wheat and flour from the other parts of the State. That in the same year, in consequence of the loss of the forts in the highlands, the enemy from the southward, invaded and penetrated into the most interior parts of the State, and the inhabitants from every quarter were called forth in its defence, and necessitated to omit the cultivation of their farms in the heighth of seed time. That during the course of the last year, several valuable settlements to the westward, and from whence considerable supplies of wheat usually obtained, have been destroyed. That this State, having, since the opening of the campaign in 1776, been the principal seat of war, great part of it, though not within the power of the enemy, hath lain uncultivated; and the farmers have been incessantly called from the cultivation of their lands, either to serve in the militia, or to assist with their cattle in transporting stores and provisions for the army. That the troops and prisoners, in this State and the eastern States, have hitherto been almost entirely supplied with, and still expect, their flour from this State. That, notwithstanding the prohibition, great quantities of flour have been clandestinely carried out of the State, and either exported or conveyed to the enemy. That until the late resolution of Congress for preventing it, wheat was purchased for forage, and, while the Grand Army lay at the White Plains, consumed at the rate of upwards of one thousand bushels per day; and at the other posts, in the like proportion. That in many instances, the disaffected to prevent us from obtaining a supply from them, have neglected to sow their usual quantity of grain. That the crops of the last harvest were generally slender, estimated at not above five eighths of the ordinary product. That the Legislature are not informed of a competent magazine of flour, provided in any part of the State for the army. That the supplies intended for the troops in the Southern Department of the State are so extremely deficient, that we have reason to fear, the posts in the Highlands and Westchester County, will be abandoned, unless a speedy supply of flour is obtained. That altho' no exact account hath been taken of the wheat and flour in the State, yet from every information, there is reason to conclude, that there is not more than a sufficiency for the subsistence of the inhabitants, and the army.

That tho' many of these facts are alarming, and as such ought undoubtedly to remain a secret, and concealed from the enemy, yet that the Legislature find themselves constrained to communicate them in confidence to certain persons, in whom they can confide, and who have applied for permission to export flour, to convince them, that, consistent with a due regard to the preservation of the army, and the safety of the common cause, the Legislature cannot comply with their request. That no flour or wheat ought to be exported out of the State, except for the immediate purpose of the war, and that the prohibition on exportation, doth not proceed from partial or selfish considerations, but was originally laid, and is still continued, from its absolute necessity, and solely with a view to prevent the enemy from receiving supplies, and to preserve the means of subsistence for those troops, on whom (under God) the freedom and independence of these States, so essentially depends. That more effectually to answer these purposes, the Legislature have entirely precluded all persons from purchasing, except for the consumption of their respective families, or for the use of the army. That these regulations are very prejudicial to the private interests of the inhabitants of this State, as they are thereby deprived of the opportunity of carrying their produce to the highest market, and consequently compelled to sell it at an under rate. That the feelings of the Legislature, for the distresses of their Brethren in the Eastern States, can only be equalled by their wishes to relieve them. That whenever the Legislature shall be informed, that proper magazines are provided for the army, and that a surplus remains beyond the necessary quantity, for the support and maintenance of the inhabitants of the State; out of that surplus, permission will be freely granted to export any provisions that may be necessary for the support of their fellow citizens in the other States; and that the Legislature will deem themselves extremely happy, that an opportunity will then be afforded, of contributing to their relief."

In response to the Governor's special message of the 18th of February, a concurrent resolution was adopted requesting him to transmit to Congress, a copy of the foregoing resolution of the 11th.

See special messages of February 28 and March 15.

GEORGE CLINTON, Governor.

FIRST MEETING.

Governor Clinton issued a proclamation on the 17th of July convening the Legislature at Kingston on the 9th of August, but a quorum did not appear in both Houses until the 24th, at which time the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.— The meeting of the legislature, intended to have been held agreeable to their last adjournment, having been prevented by several of the members taking the field with the militia, the business of the session thereby remained unfinished; this, with the importance of several other matters I have now to lay before you, induced me to convene you at this early season, with a view to your dispatching those parts which require your immediate attention, and fixing by your own adjournment, such future day as you shall judge most convenient for completing what may be safely deferred.

With respect to the general condition of the state, it is my duty to inform you that the enemy, frustrated in their late attempts to penetrate into the more interior parts of it, and increasing in barbarity, as they diminish in strength, have, with circumstances of extreme cruelty, laid waste a considerable part of Westchester county, which from its situation must unavoidably be exposed to the ravages of an enemy who have the command of the waters by which it is nearly encompassed.

Such part of levies destined for the protection of the northern and western frontier, as are raised, have been so

disposed as, with the militia, in a great measure to afford security to the different settlements, which (if we except the irruption of the enemy at Minisink at the time when the guards, who had been stationed there, were withdrawn to assist in offensive operations) have, for the most part, remained undisturbed, and we have now reason to hope from the movements of our western armies that the inhabitants will not only enjoy tranquillity in future, but that just vengeance will be taken on their savage enemy.

GENTLEMEN.— It is with pleasure I observe that by the assiduity of the courts of justice, robberies and other offenses against the public peace, notwithstanding the insidious arts of our enemies to encourage them, daily become less frequent.

I am sorry at the same time to inform you that neither the justice and forbearance manifested in your late resolutions relative to the disaffected subjects in the northeastern counties of this state, nor the measures which congress have yet thought fit to adopt, have in any degree tended to quiet the disturbances in that part of the state. The papers which I shall leave with you will convey every necessary information on that head, and evince the necessity of your taking immediate and decisive steps for the restoration of order and good government, and the protection of the faithful subjects of the state in those counties.[1]

"GENTLEMEN OF THE SENATE AND ASSEMBLY.— I now also submit to your consideration a letter from his excellency General Washington, dated the 22d day of May last, and sundry resolutions of congress transmitted to me in the recess of the legislature, particularly respecting the clothing[2] and recruiting the continental regiments, and for de-

[1] For a note on the Vermont controversy, see *post*, p. 102.

[2] An act, chap. 2, was passed September 23, 1779, creating the office of state clothier, to be appointed by the Governor by and with the advice and consent of the Council of Appointment. Provision for supplying the army with clothing was made by an act, chap. 54, passed March 11, 1780.

fraying the expenses of the current year,[3] and supporting the credit of the paper money.[4] As the enlistments of many of the men will expire in the course of the ensuing winter, the supplying their places will merit your early attention.[5] The evils which we experience from the continued depreciation of our currency, the encouragement the enemy derive from this circumstance, and the danger which might attend a total loss of its credit, render it a subject of the first importance and are alone sufficient to recommend it to your most serious deliberation, while the sense that your constituents loudly express of the necessity of applying some suitable remedy to this growing evil, give you the strongest assurances of their acquiescence in any plan which their constitutional representatives on a full and impartial review of the general interest, as well as the relative situation of the state, shall think proper to adopt.

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[3] Acts providing for the contingent expenses of the state were passed October 25, 1779 (chap. 31), and March 13, 1780 (chap. 61).

[4] The subject of the credit of the paper currency was referred to a joint committee of the two Houses, which made a report, in which the committee expressed the opinion that "frequent and heavy taxes equally laid on all real and personal estates, and such voluntary loans as might be granted to the United States, would prevent the necessity of further emissions of paper money, lessen the quantity in circulation, and be the most effectual means of restoring its credit," and recommending that the price of produce, labor, manufactures and merchandise be regulated by law, and that measures be taken to prevent monopoly and extortion. In addition to the acts mentioned in note 3, an act, chap. 27, was passed October 23, 1779, providing for a tax of $2,500,000, and another act, chap. 47, was passed March 6, 1780, levying a tax of $5,000,000, in aid of the national government, and to pay the amount apportioned to New York under several acts of Congress providing for expenses of the war. Another act, chap. 46, affecting this subject at least indirectly, was passed March 1, 1780, which provided for cancelling defaced bills of credit issued under the authority of the late Provincial Congress and the Convention.

[5] An act, chap. 53, was passed March 11, 1780, which provided for raising troops for the defence of the frontiers "whenever the Congress of the United States shall have declared that the said troops shall be paid and subsisted at the expense of the said United States." Another act, chap. 70, passed June 24, 1780, provided for levies to reinforce the army of the United States.

GENTLEMEN OF THE LEGISLATURE.—I shall from time to time during the session digest and communicate to you such other matters as shall appear to me to require your attention. It is under Divine Providence, on the wisdom and unanimity of the councils of America at this juncture that her happiness depends; and I have a confidence that the same zeal to promote the common cause for which the state hath hitherto been distinguished, will be equally conspicuous in your deliberations.

GEO. CLINTON."

Kingston, August 24, 1779.

SPECIAL MESSAGES.

August 26. To the Assembly: Announcing that he had suspended the execution of Jonah Wood, who had been convicted of murder, and the case was therefore submitted to the Legislature for its consideration.[6]

September 2. To the Senate: Transmitting letters from General Washington, Jeremiah Wadsworth, Commissary General, and the President of Congress, and also an act of Congress, and recommending legislative consideration of the matters therein contained.[7]

September 3. Thanking the Senate for its address.

September 4. To the Assembly:

"GENTLEMEN.—The repeated applications which are made to me for licenses to export flour for the purpose of procuring salt, as well as my own observation, convince me

[6] The Legislature at this session granted Wood three reprieves, and he was pardoned at the next session, by an act, chap. 3, passed September 22, 1780.

[7] According to a report of an Assembly committee to which this message was referred, the act, chap. 78, passed July 1, 1780, "to complete the Continental Battalions raised under the direction of this State," was in part the Legislature's answer to the suggestions contained in this message, and the accompanying papers. See also Special Messages of October 2, 1779, and January 27, 1780.

that there is a great and uncommon scarcity of that essential article of life.

I, therefore, think it my duty to recommend it to you, to devise means for enabling the good citizens of this State to obtain a seasonable supply, to prevent the distresses to which they may be otherwise exposed. A partial supply, I am informed, is promised by the Commissary General, in exchange for wheat, but at a price much dearer than it can be purchased if the farmer was at liberty to barter his produce for it in other States; and if it should arrive in season for the use of the farmer, which is much to be doubted, it is not to be expected that the quantity, which may be procured from the Commissary, will be anywise adequate to our wants.[8]

GEO. CLINTON."

Kingston, September 4, 1779.

September 6. Thanking the Assembly for its address.

September 8. To the Assembly:

"GENTLEMEN.—I have to recommend to your early attention, the several resolutions of Congress, of the 5th of May last, relative to the settlement of the accounts of the late Commissary General Trumbull; of the 23d of July last, for the better preservation of buildings and other property, belonging to the United States, and for preventing encroachments on grounds or places occupied for the purposes of defence; of the 22d of June, recommending the

[8] In response to the Governor's suggestion, as to a needed supply of salt, the Senate prepared a letter for transmission to the New York delegates in Congress, requesting them to intercede with Congress for a quantity of salt for the use of the inhabitants of this State, but the Assembly did not concur.

On the 20th of October, 1779, an act was passed, chap. 21, amending a former act prohibiting the exportation of flour, meal and grain by authorizing such exportation of flour and wheat by certain persons under prescribed conditions, for the purpose of procuring salt for the use of the inhabitants of this State.

adopting of measures, to prevent the plundering of the inhabitants of Long Island, and other places in possession of the enemy; and of the 14th of April last; copies of which resolutions will be herewith delivered to you.[9]

GEO. CLINTON."

Kingston, September 8, 1779.

September 9. To the Senate: Transmitting a letter from James Wilkinson, Clothier General, with a copy of a letter received by him from the Board of War.[10]

September 14. To the Senate: Transmitting letters, and a petition relative to certain outrages committed by some of the inhabitants of Westchester County on the property of other inhabitants.

September 22. Transmitting to the Assembly, in re-

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[9] The Assembly adopted a resolution on the 1st of October, which was concurred in by the Senate the next day, requesting the Governor "forthwith to issue his Proclamation, strictly forbidding all persons whomsoever, to plunder the inhabitants of Long Island, or any other place in the power or possession of the enemy, within this State; and also strictly forbidding all persons, subjects of this State, to plunder any inhabitant or inhabitants of any other of the United States, within the power or possession of the enemy; and thereby declaring, that if any person shall so offend against the law of nations and the rights of war, he, she, or they, so offending, shall be punished to the utmost rigor of the law. And that his Excellency be also requested to write to the Executive powers of the States of Connecticut and New Jersey, earnestly requesting them respectively to issue a similar proclamation; and that his Excellency request the several officers commanding on or near the enemy's lines within this State, to take and secure all such offenders, and cause them to be sent to the Board of Commissioners for detecting and defeating conspiracies in this State."

Governor Clinton issued the proclamation recommended by the Legislature, and on the 4th of October, 1780, wrote to the Governors of Connecticut and New Jersey, requesting them to take such measures as might be proper to prevent the plundering of inhabitants of Long Island or other places within this State in the possession of the enemy.

[10] The Legislature responded to this appeal for clothing, by enacting chap. 54 on the 11th of March, 1780, to provide "the troops of this State in the service of the United States with clothing and other necessaries." A supplementary act, chap. 66, was passed June 23, 1780, authorizing the purchase of additional clothing for the troops.

sponse to its resolution, an abstract of the returns of the militia of the several counties within this State.

September 23. To the Senate:

Objections by the Council of Revision to an act "for continuing the powers of the commissioners for detecting and defeating conspiracies, and for other purposes therein mentioned."

"It appears from the preamble that the laws, by the said bill intended to be continued, are already expired by their own limitation; and the enacting clause containing no words of revival or re-election, the whole law becomes nugatory, as that cannot be continued which does not exist."

The bill was not passed over the veto.[11]

September 24. To the Senate:

"GENTLEMEN.—This message is accompanied with three resolutions of Congress, one of the 21st of August, on the subject of an embargo; one of the 25th of August, against restrictions on the inland trade between the States; and the third of the 10th instant, for providing clothing for the troops; and a printed copy of a circular letter, of the 13th instant, addressed from Congress to their constituents.

GEO. CLINTON."

Kingston, September 24, 1779.

September 29. To the Senate: Transmitting a petition from Nicholas Richter of Tryon County, setting forth that himself and wife have been wounded and driven from their habitation by the enemy, and are in want of the necessaries of life; also a petition from John Ockerman, and others, refugees from New York, setting forth that they, with their

[11] To obviate the Council's objections, the Legislature passed an act, chap. 7, October 1, 1779, reviving "the powers of the commissioners for detecting and defeating conspiracies, and for other purposes therein mentioned." Another act on the same subject, chap. 62, was passed June 14, 1780.

families, have been driven from their places of residence at Haverstraw and King's Ferry, and are in want of subsistence; and a petition from James Huey and others, praying the grant of a piece of land for the use of the congregation at Hopewell in Ulster County.

September 29. To the Assembly: Transmitting a communication from the Oyer and Terminer of Ulster County, recommending to mercy Thomas Cummings, convicted of high treason, and also a petition from Cummings delivered to the same court after sentence.[12]

October 1. To the Assembly: Transmitting petitions from citizens of Saratoga relative to a supply of salt. (See note 8.)

October 2. To the Senate: Transmitting an act of Congress relative to the Vermont controversy, and recommending action thereon. (See note 1.)

October 2. To the Senate: Transmitting a letter from Royal Flint, Assistant Commissary General of Purchases, relative to the supply of flour.[13]

October 2. To the Assembly: Transmitting a return of the Five Continental Battalions, and also a letter from Baron Steuben, "pointing out the necessity of immediate and effectual measures for recruiting these regiments. (See note 7.)

October 4. To the Senate: Transmitting a letter from Samuel Curson.[14]

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[12] Thomas Cummings was pardoned by chap. 10, passed on the 8th of October, 1779. The preamble recites that the pardon was granted for "certain special reasons," but the reasons do not appear in the record.

[13] Responding to this suggestion, as to the supply of flour, the Legislature passed another act, chap. 15, on the 13th of October, 1779, removing limitations of prices imposed by the act passed the 4th of September, 1779 (chap. 1) and requiring products purchased for the use of the army to be paid for at current prices.

[14] Curson's matter related to a quantity of gunpowder intended for New York, but which had been seized by the enemy in transit. The Legislature took no action, except to institute an inquiry concerning the transaction which was said to have been managed by agents of the late Provincial Congress of the colony.

October 4. To the Senate: Transmitting for legislative consideration and action, a letter from the President of Congress, accompanying an act of Congress, together with extracts of letters from General Washington.

October 9. To the Senate:

"GENTLEMEN.—By a letter from the Honorable John Jay, Esq. I am informed he is appointed Minister from the United States of America, to the Court of Madrid, and that he is to sail in a few days; which I thought proper to communicate to the Legislature, in order, if they should conceive it necessary, that a suitable person may be elected to supply his place in Congress.[15]

GEO. CLINTON."

Kingston, October 9, 1779.

October 13. To the Senate:

"GENTLEMEN.—I herewith submit to your consideration, a letter from the General Assembly of the State of Massachusetts Bay of the 28th of September last, respecting a regulation for limitation of the prices of certain articles of merchandise; and proposing a consultation for this purpose on the part of the States of New Hampshire, Rhode Island, Connecticut, Massachusetts Bay, and this State, to be holden at Hartford the 20th instant.[16]

GEO. CLINTON."

Kingston, October 13, 1779.

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[15] Philip Schuyler was chosen a delegate to Congress in place of Mr. Jay. At the same time, Robert R. Livingston, Chancellor, was chosen an additional delegate to Congress, the Legislature declaring by resolution that a "special occasion" existed within the meaning of article 25 of the Constitution, which excluded the chancellor and justices of the Supreme Court from holding any other office, except that they might be chosen delegates to Congress on special occasions.

[16] The Legislature adopted a concurrent resolution, October 25th, urging Congress to take measures for the general regulation of prices of produce, merchandise, and labor. On the 26th of February, 1780, an act, chap. 43,

October 13. To the Senate: Transmitting a letter from Jeremiah Wadsworth, Commissary General of Purchases, relative to a supply of salt. (See note 8.)

October 14. To the Senate: Transmitting a resolution of Congress directing the Continental agent at Boston to sell to this State a certain quantity of rum and sugar at the current wholesale price, together with a letter from the President of Congress accompanying the same.[17]

October 15. To the Senate:

Objections by the Council of Revision to a bill "to indemnify the sheriff of the county of Ulster against involuntary escapes on civil processes, and for other purposes therein mentioned."

The bill required the county treasurer to pay the amounts recovered against the sheriffs in actions for escapes, but the Council thought the bill would defeat itself, for the reason that it required the sheriff to keep the prisoner in close custody as a condition precedent, and this condition would be broken by an escape which would discharge the county from liability. The bill also, it was thought, afforded opportunities for collusion between the sheriff and prisoner, and no method was provided by which the county might recover from the defendant the amount

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was passed "for a general limitation of prices, and to prevent engrossing and withholding within this State."

On the 8th of March, the Assembly adopted a resolution, which was concurred in by the Senate the next day, providing that the New York delegates in Congress, or any two of them, "be commissioners on the part of this State, to meet in a Convention of the States, northward of North Carolina, intended to be held at the city of Philadelphia, on the fourth day of April next, for the purpose of considering the expediency of limiting the prices of merchandise and produce," and the foregoing act was to be transmitted to the delegates, and also information to be procured by the Governor relative to prices of produce and merchandise in the State.

[17] The Assembly adopted a resolution on the 21st of October, 1779, which was concurred in by the Senate the next day, declining to purchase five hundred hogsheads of sugar and fifty hogsheads of rum directed by Congress to be sold to this State by Massachusetts, for the reason that the ability of the State in its then impoverished condition, would not permit the purchase.

paid on account of his escape. The bill was not passed again.

October 18. To the Senate: Transmitting acts of Congress which provided for supplying the treasury by monthly assessments, and also a letter from the President of Congress accompanying the same.[18]

October 23. To the Assembly:

Objections by the Council of Revision to a bill to "prevent horse racing and theatrical performances."

The Council minutes show that this bill was vetoed on the 21st of October, and ordered sent to the Assembly. The Assembly journal does not show when it was received. It was taken up for consideration on the 23d, and according to the journal the objections were "again read" as follows:

"First. Because the power vested in a single justice of the peace to determine causes to an unlimited amount, upon his own knowledge, or upon the oath of a single witness, without a jury, is a direct violation of that Clause of the Constitution, which ordains, 'That trial by jury, in all cases, in which it hath heretofore been used in the Colony of New York, shall be established, and remain inviolate forever;' and may be considered as a new court, not proceeding according to the course of the common law, which the Constitution expressly prohibits the Legislature from instituting.[a]

Second, Because by the first enacting clause, the owner or owners of the horses employed in racing, are rendered liable to forfeit the same, though they should not have had the least previous knowledge thereof; by which means a very heavy and unjust punishment may be inflicted upon

[18] According to the resolution of Congress, adopted October 7, 1779, New York's quota of the $15,000,000 asked from the States was $750,000. According to the act, chap. 27, passed October 23, 1779, to raise $2,500,000 by tax for the national government, New York's quota was stated to be $800,000, which amount was to be paid by the State Treasurer.

[a] Const. 1777, § 41.

the most innocent persons, whose horses may be run by their own servants, contrary to their orders, or by persons who have stolen them from their pastures.

Third, Because the law makes no effectual provision, in case the proprietor of the horses running, lives without the State, or in another county, and has no goods or chattels whereon to distrain, within the Justice's jurisdiction; because it gives no power to seize the horse, but leaves it at the option of the owner, either to produce the same or not; so that the law, instead of preventing horse races, will in many cases only render them more expensive to the community, and productive of more idleness, by carrying people from one county to another.

Fourth, Because where a horse is to be sold by virtue of this law, the justice is empowered to proceed to the sale without giving any notice thereof, so that he may by collusion defraud the State out of the greater part of the penalty.

Fifth, Because the act does not ascertain the rate of fees, and other charges which may accrue in the execution of the powers vested in the justice thereby; but leaves it in his discretion to retain what shall seem reasonable to him; nor can the propriety of the charges ever come in question, except the treasurer shall think it necessary to have them ascertained by an actual suit against the justice, a remedy which would be attended with too much expense and trouble to be applied except in very extraordinary cases.

Sixth, Because the act establishes a dangerous precedent, by investing a single justice of the peace with such power over the liberty and property of the freemen of this State, as should only be entrusted to the higher courts of judicature, where the party charged may have the full benefit of the law, to which every subject is entitled."

The bill was not passed over the veto.

October 25. The Legislature adjourned to meet the second Monday (10th) of January, 1780, at a place to be designated by the Governor.

SECOND MEETING.

On the 1st of December, 1779, the Governor issued a proclamation convening the Legislature at Albany on the 4th of January, 1780. According to the Senate journal several members met that day, but on account "of the deep fall of snow and inclement weather," a quorum did not appear until the 27th. A quorum appeared in the Assembly on the same day. This was the first meeting of the Legislature in Albany.

1780. January 27. To the Senate:

"GENTLEMEN OF THE LEGISLATURE.—Since your recess I have received several resolutions from the Honorable the Congress, which are herewith communicated.[19] That of the 19th of November last, recommending it to the several Legislatures forthwith to enact laws for establishing and carrying into execution a general limitation of prices, was the immediate occasion of my calling you, previous to the day on which you were to have met by your own adjournment. It is a subject intricate in its nature, and of great importance, and demands a suitable attention. [See note 16.]

The recruiting the regiments of this State to their proper complement, you had under your consideration at your last meeting. This is a service which admits of no delay, and I am persuaded you will give it all the encouragement and dispatch, which a regard to the public safety requires. If

[19] According to a report of a Senate committee made on the 28th of January, one of the resolutions of Congress referred to in this message recommended state legislation to compel witnesses to appear and testify before courts martial. An act, chap. 39, was passed February 19, 1780, compelling the attendance of persons, not belonging to the army, as witnesses at courts martial and courts of inquiry.

we mean to avail ourselves of past successes, and with the divine favor to ensure the blessings of liberty and peace, let us be prepared for war, and persevere in those great exertions, by which this State has acquired reputation and respect. With this view permit me further to recommend it to you to reassume the consideration of a more adequate subsistence for those brave men, who form the quota of this State in the Continental Army. Good policy seemed to require that at the common expense of the Confederacy its whole force should have been placed on an equal establishment, but as several governments, by partial provisions, have anticipated such a measure, Congress have referred it to the wisdom and liberality of the several Legislatures. I am sensible that we are in this respect under singular disadvantages, arising from the obstruction of our Commerce. I trust, however, that it is in our power, and that you will with alacrity apply the means to relieve the necessities and reward the merit of our officers and men; and while their present subsistence is rendered more comfortable, to hold out to them well founded prospects of future support. These are encouragements which their circumstances require, justice dictates, and the example of the other States renders indispensably necessary. A memorial from several of the officers, on this subject, addressed to the Legislature, and delivered to me in the recess, with a letter from the Honorable Major General Baron Steuben, Inspector General of the Army, descriptive of the distressed situation of the troops of this State, you will herewith receive.[20]

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[20] The Legislature passed four acts in response to this suggestion relative to army supplies; first, chap. 34, passed February 12, 1780, more effectually to supply the army with flour; second, chap. 35, passed February 12, 1780, to facilitate supplies for the army of the United States within this State; third, chap. 54, passed March 11, 1780, to provide the troops of this State in the service of the United States with clothing and other necessaries; and fourth, chap. 69, passed June 24, 1780, "to procure supplies for the use of the army, and to prevent a monopoly of cattle within this State, and more effectually to prevent supplies of cattle to the enemy."

The militia law is near expiring, and as there is still a necessity of our being in constant preparation for the most vigorous exertions, I flatter myself that you will see the expediency of its being continued, with such amendments as experience may have discovered to be necessary.[21]

GENTLEMEN.—Notwithstanding the disgrace and disappointment which have attended the arms of the enemy, and the little prospect they must have of conquest:—notwithstanding they have lost several of their islands in the West Indies, and the Dominion of the Sea, and are no longer able to defend their Kingdom from insult, or their only allies, the savages, from destruction; they still continue, in considerable force, in and near our capital. It is not improbable, that, hoping to find us unguarded and unprepared, they wait for an opportunity to make an irruption into the country; which they thought too hazardous while our army was in the field. I should therefore feel great regret, in being long detained at so great a distance from that part of the State which is most exposed to their depredations; especially when I reflect, that on such an event we might be deprived of the military services of many gentlemen who belong to the Legislature, and hold important commands in the militia. Under these apprehensions, let me recommend to you the utmost diligence in dispatching the business which now calls for your attention.

GEO. CLINTON."

Albany, January 27, 1780.

January 27. To the Assembly:

"GENTLEMEN.—I refer to your consideration a letter from his Excellency General Washington, of the 16th of December last, and a copy of my answer. An act of the Honorable the Congress, of the 12th instant, and a letter from his Excellency the President, of equal date, with the

[21] A militia law, chap. 55, was passed March 11, 1780.

several papers it enclosed. From these you will discover the distressed situation of our army, for want of an adequate supply of provisions. The dangerous consequences which may result from this disagreeable circumstance, will, I am persuaded, induce you, without loss of time, to adopt such measures as may be in the power of the State to prevent them. (See note 20).

By a letter from Major General Heath, of the 20th instant, an abstract of which you will herewith receive, I am informed, that the enemy derive considerable supplies of cattle and grain from the disaffected inhabitants residing near the lines, in Westchester County. I have, therefore, to recommend that some suitable provision be made to obviate this abuse in future.[22]

GEO. CLINTON."

Albany, January 27, 1780.

February 8. To the Assembly:

"GENTLEMEN.—In addition to my message of the 27th ultimo, relative to the distressed situation of our army for want of an adequate supply of provisions, I now transmit you a letter from the Honorable Major General Heath, of the 25th ultimo; and two letters from Colonel Udny Hay, Deputy Quarter Master General, the one of the 20th ultimo, the other of the 3d instant, covering a copy of a letter from George Trimble, of the 2d instant, on that subject. (See note 20.)

GEO. CLINTON."

Albany, February 8, 1780.

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[22] The act, chap. 69, passed June 24, 1780, relating to supplies for the army, authorized the Governor by proclamation from time to time "to assign a line, or lines, in the counties of Westchester and Orange, to the southward of which no neat cattle or beef shall be driven or removed, unless such cattle or beef are intended for the use of the troops in the service of the United States or this State, or unless such cattle, being draft cattle, shall be actually employed in public service," and the act imposed penalties for the violation of the proclamation.

February 14. To the Senate, transmitting another letter from Samuel Curson. (See note 14.)

February 14. To the Assembly:

"GENTLEMEN.—You will receive with this message an act of Congress of the 14th ultimo, recommending to the Legislatures of the several States, to make provision for conferring the like privileges and immunities on the subjects of his Most Christian Majesty, as are granted to the subjects of the United States of America, by the articles of the Treaty of Amity and Commerce, subsisting between the two nations; a measure which I doubt not will command your earliest attention.

GEO. CLINTON."

Albany, February 14, 1780.

February 17. To the Senate:

"GENTLEMEN.—You will herewith receive a letter from the Honorable Gouverneur Morris and Francis Lewis, Esquires, late delegates from this State in Congress, dated the 26th day of October, 1779; in answer to yours on the subject of providing clothing for our Five Continental Battalions, together with a letter of the 23d ultimo, from James Black, Esq. Clothier for this State, stating the insufficiency of his pay, and covering a return of the clothing he has issued, and of the quantity wanting to make up deficiencies.

I also transmit you a letter from the General Assembly of the State of Massachusetts Bay, dated the 14th ultimo, respecting the repeal of the inland embargo laws. You will perceive the necessity of my being acquainted with the sense of the Legislature on this subject, to enable me to answer this letter.

GEO. CLINTON."

Albany, February 17, 1780.

February 19. To the Assembly: Transmitting a petition presented by Casper Stoudt for compensation for services in manufacturing sulphur and copperas.[23]

February 21. To the Senate:

"GENTLEMEN.—Although the operations of our army against the savages the last year have given a temporary security to our frontier settlements; yet there is every reason to apprehend, that the enemy, prompted by revenge, will, as soon as the season may permit, repeat their incursions into this State. It is therefore our duty to be prepared against such an event, and I have to recommend to the Legislature, that suitable provision be made for this service.[24]

GEO. CLINTON."

Albany, February 21, 1780.

February 21. To the Assembly:

"GENTLEMEN.—In the course of the war, many of the militia of this State have been killed in its immediate service, some have been wounded, and others have lost their arms and accoutrements; and no adequate provision has as yet been made, either for the widows and children of such as have fell, to cure the wounded, to support such as by their wounds have become unable to support themselves, or to pay the individuals for their arms and baggage lost in the public service. The justice which is due to the several claimants, induces me to mention these matters; and to

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[23] According to a concurrent resolution adopted March 14, 1780, agents of the State had entered into a contract with Casper Stoudt for the manufacture of sulphur and copperas, and had erected works and drawn money from the Treasury for that purpose. The resolution declared it inexpedient further to continue the manufacture, and recommended that the agents settle with and discharge Mr. Stoudt, and gratuitously convey and assign to him the works where the manufacture had been carried on, "as a compensation to him for the services he has rendered to the State, by introducing therein the method of making sulphur and copperas."

[24] An act, chap. 53, to raise troops for the defence of the frontiers, was passed March 11, 1780.

recommend them with a letter from Colonel Jacob Klock, of the 20th of October, 1779, on this subject, to the consideration of the Legislature.

GEO. CLINTON."

Albany, February 21, 1780.

February 21. To the Assembly: Transmitting a letter from the delegates in Congress, with accompanying papers.

February 25. To the Senate:

"GENTLEMEN.—I herewith refer to your consideration, two acts of Congress of the 9th instant; the one making requisition to the different States, for their respective quotas of men for the service of the current year; the other engaging, that on a final settlement, allowances shall be made to such States as may appear to have raised, or had in service, more than their just proportion of troops; together with the President's letter, which accompanied the said acts. [25]

GEO. CLINTON."

Albany, February 25, 1780.

March 3. To the Senate:

"GENTLEMEN.—By the return of the troops, forming the quota of this State in the Continental Army, which I have now the honor of transmitting to you, you will observe that the proportion to be furnished by this State for the ensuing campaign, agreeable to the act of Congress, of the 9th instant, is already more than complete. This agreeable

[25] In response to the suggestions contained in these acts of Congress, the Legislature adopted a resolution on the 2d of March, requesting the Governor to "represent to Congress the condition of the frontiers, the necessity of providing for their defence, and the inability of this State to pay or subsist any troops; and to assure Congress, that this State is disposed to raise any number of men, not exceeding eight hundred, to be employed for the ensuing campaign in that essential service, and to be under the command of the Commander-in-Chief of the Army of the United States, if Congress will please to direct provision to be made for their pay and subsistence."

circumstance will afford you leisure to devise the most proper and effectual measures for recruiting your regiments for future service.

GEO. CLINTON."

Albany, March 3, 1780.

March 6. To the Assembly:

Objections by the Council of Revision to a bill "for the immediate sale of part of the forfeited estates."

The Council were of the opinion that forfeited estates would not bring their true value for the reason, among other things, that the farmers and soldiers did not have the means with which to purchase such estates, and the estates would, therefore, probably fall into the hands of speculators. Noting the fact that the difference between specie and Continental money was not less than thirty to one, the Council said that a forced sale of these estates would tend to increase the depreciation of the Continental money. The Council also thought the bill would not accomplish the purpose intended by the Legislature, partly for the reason that not more than five hundred acres could be sold in one parcel, and partly because of the necessary delay in making sales under the terms of the bill.[26]

March 7. To the Assembly:

"GENTLEMEN.—I conceive it my duty to lay before the Legislature a letter I have received from Jacob Cuyler, Esq. Deputy Commissary General of Purchases, dated the 6th instant, with a resolution of Congress, of the 1st of January last, relative to that department; that such measures may be taken as shall appear necessary to prevent the ill consequences, which it is apprehended will result from

[26] The bill relating to the sale of forfeited estates was passed over the veto, and became a law, chap. 51, on the 10th of March, 1780.

the alterations made by this resolution in the Department of Commissary General of Purchases.

You will also herewith receive a letter from Dr. Malachi Treat, of the General Hospital of the United States, dated the 29th ultimo, respecting the distressed situation of the wives of soldiers, citizens of this State, who have been engaged as nurses in the Hospital in this City, but must now be discharged for want of employment; together with a petition of their husbands on the same subject.

GEO. CLINTON."

Albany, March 7, 1780.

March 8. To the Assembly:

Objections by the Council to a bill "to facilitate the levying the taxes for supporting the poor and defraying the contingent expenses in the counties of Ulster, Orange, Westchester, Dutchess, Tryon and Charlotte."

The Council objected to the bill because it authorized justices of the peace in the counties named, to determine the sum to be raised for the support of the poor in their respective localities.

"The power of raising money upon the people belongs to their immediate representatives, and it is inconsistent with every idea of civil liberty, that any body of men should enjoy that power, who do not possess this character; so true is this principle, that taxation and representation are inseparably connected, that it lies at the foundation of the late happy Revolution.

To authorize the justices to charge the people of these counties with such sums, as they shall judge necessary, is leaving the property of the people at the disposition of persons, who are not their immediate representatives, and whose conduct they cannot control, is departing from one

of the principles which justify our revolt from British usurpation, and is inconsistent with the public good."

The bill was not passed over the veto.

March 9. To the Assembly:

"GENTLEMEN.—There are large sums of money due to the militia of this State, for their pay and subsistence while in actual service. This being a matter generally known to the members of the Legislature, I was led to hope that provision would have been made for discharging those debts; but as I have not yet observed that any measures have been taken for this purpose, I am apprehensive that in the multiplicity of important business, in which the Legislature have been engaged, it may have escaped their attention. I therefore take the liberty of recommending this business to your consideration.[27]

GEO. CLINTON."

Albany, March 9, 1780.

March 14. The Legislature adjourned to meet the first day of June, at a place to be designated by the Governor.

THIRD MEETING.

April 22, 1780. The Governor issued a proclamation convening the Legislature at Kingston on the 9th of May, but a quorum did not appear in both Houses until the 25th. The Assembly Journal covering this meeting has not been printed, and is apparently lost. The special messages are in part given in the Senate journal of proceedings at this meeting, and also in a bound volume of manuscript messages in the State Library. The proceedings of the Council of Revision have been examined for vetoes during this meeting.

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[27] The salaries act, chap. 79, passed July 1, 1780, authorized the Governor to draw warrants on the treasury for pay and subsistence of militia for services already performed, as well as for services thereafter to be performed.

SPECIAL MESSAGES.

May 25. To the Senate:

"GENTLEMEN.—The reasons which induced me to convene the Legislature at this time, may be collected from the several papers you will receive with this message.

The system of finance lately adopted by Congress, and recommended to your consideration by their resolutions of the 18th of March, is a matter of the first importance, and demands your early and most serious attention. The President's letter of the 20th of March, pointing out the necessity of this measure, and of its being carried into immediate execution by the different States, with a letter from the delegates of this State, explaining the principles on which these determinations of Congress were formed, are herewith communicated.[28]

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[28] An act, chap. 64, was passed June 15, 1780, approving the act of Congress of the 18th of March referred to in the Governor's message, and making provision for redeeming the proportion of this State of the bills of credit to be emitted in pursuance of the said act of Congress. A supplementary act, chap. 72, on the same subject, was passed June 30, 1780. Another act, chap. 11, intended to sustain and enforce the foregoing legislation, was passed October 7, 1780. The preamble recites that the proportion of the bills of credit assigned to this State for emission and redemption, by the act of Congress of the 18th day of March last, amounts to $487,500, and the annual interest thereof, to be paid in gold or silver, amounts to $24,375, and that the act recommended that the States provide for redeeming one-sixth of their respective quotas annually after the first of January, 1781. Chap. 16, passed October 10, 1780, levied a tax of $150,000 to be paid in specie, for the purpose of complying with the acts of Congress apportioning national expenses among the several States. Chap. 19, passed February 22, 1781, provided for "better establishing the rate of exchange between the bills emitted upon the credit of this State, pursuant to the act of Congress of the 18th of March, 1780, and the Continental currency theretofore issued."

Chap. 64, approving the national system of finance, received further attention at the next session when chap. 46 was enacted on the 27th of March, 1781, authorizing the emission of state bills of credit amounting to $411,250. The occasion for this act seems from the preamble to have been that "by reason that the greater part of the produce of this State hath for a considerable time past been applied to the use of the army, upon certificates

The resolutions of Congress of the 25th February last, fixing the proportion of specific supplies for the army, to be furnished by the respective States, were received soon after your adjournment. Whether after the measures which were taken at your last meeting, for supplying the army with provisions and replenishing the public magazines, the resources of the State are such as will enable you, consistent with the safety of its inhabitants, to yield in any degree of compliance with the present requisition, is with you, Gentlemen, to determine. It is with the greatest concern, that I am obliged to inform you that the most vigorous efforts for maintaining the army, continue to be requisite; as from the present deficiencies in our public magazines, the most distressing embarrassments are to be apprehended in the operations of the ensuing campaign, particularly those directed for the defence of our frontiers.

I am sorry to inform you, Gentlemen, that during your recess, hostilities have been committed by different parties of savages, upon several of our remote settlements. That the levies directed to be raised for their defence, are not adequate to that service; and should we be obliged for want of provisions to withdraw those troops, insufficient as they are from the posts assigned them, it may be attended with consequences of the most serious nature.

GENTLEMEN.—You will herewith receive a letter from the Honorable the Congress, of the 24th ult. pointing out the importance of several of the matters now submitted to your consideration, and urging in the most explicit terms,

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from the purchasing officers to the inhabitants and by reason that the balance of trade hath been greatly against this State, and owing to various other causes there is an inconsiderable sum of the former Continental currency now circulating within this State, insomuch that a competent sum of the new bills to be issued pursuant to the said act of Congress, cannot be drawn into circulation seasonably to answer the public exigencies."

Chap. 57, passed June 30, 1781, further modified chap. 64, above cited, by requiring a part of the tax to be paid in specie and a part in paper currency.

a speedy and perfect compliance with their requisitions; I need not therefore, mention the necessity there is of giving dispatch to the business before you, especially when it is considered how inconvenient the sitting of the Legislature at this season, must be to many of the members; and that your deliberations are liable to be interrupted by the operations of war.

GEO. CLINTON."

Kingston, May 25th, 1780.

May 30. To the Senate:

"The President laid before the Senate, a letter from the Honorable Philip Schuyler, Esq. now at Headquarters, directed to his Excellency the Governor, or in his absence, to the President of the Senate and Speaker of the Assembly, informing, that the brigade of Continental Troops, under the command of Brigadier General James Clinton, were ordered to the northward for the relief of the frontiers, and requesting that the Legislature would provide for their transportation and subsistence to Albany."[29]

June 9. To the Senate:

"GENTLEMEN.—With this message you will receive a letter from a Committee of Congress at Headquarters, and a letter from his Excellency General Washington, of the 25th ult. A letter from the same committee, and a letter from his Excellency the General of the 2d instant; an act of

[29] The Legislature adopted the following resolution on the 30th of May:

"Resolved, (if the Honorable the House of Assembly concur herein) that Egbert Dumond, Esq. be employed on behalf of this State, to hire and impress vessels and teams for the transportation of the Brigade of troops, under the command of Brigadier General James Clinton, now on their march to Albany; and that Daniel Graham and Moses Cantine, Esquires, be employed on behalf of this State to purchase and impress provision for the said brigade on their march, and to hire and impress teams and carriages for the transportation of such provision; and that the Legislature will indemnify the said persons for what they shall respectively do, and make provision for the payment of the said vessels, teams and provisions, and all other expenses that may accrue in the premises; and for a proper compensation to them for their respective services."

Congress of the 19th ult. with a letter from his Excellency the President, making a requisition for the sum therein mentioned; an act of Congress of the 26th ult. recommending to the States, to provide that the certificates of the purchasing officers, should be received in payment for taxes; an act of Congress of the 27th ult. recommending to the States, to pass the necessary laws for the punishment of persons who shall conceal deserters from the fleets or armies of powers in alliance with the States; and the letter from his Excellency the President, accompanying these acts of Congress. Two letters from the Honorable James Duane and John Morin Scott, Esquires, delegates from this State in Congress, the one of the 21st ult. and the other of the 22d instant; and the letter from the Honorable John Morin Scott, Esq. of the 3d instant. These several papers came to hand during my late absence from this place, and some of them have already been communicated to you informally, by my secretary. As they all claim, so I trust, they will receive your immediate attention.

GEO. CLINTON."

Kingston, June 9th, 1780.

June 13. To the Assembly:

"GENTLEMEN.—I herewith refer to your consideration a letter from James Black, Esq. Commissary of Clothing for this State, of the 9th instant, with his account therein referred to. A petition from some of the officers of the 5th Continental Regiment of this State dated the 24th ultimo, and an account of the Governor and Company of the State of Connecticut against this State for cannon furnished by order of the Honorable John Jay Esq. in the year 1776.[30]

GEO. CLINTON."

Kingston, June 13, 1780.

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[30] In relation to the cannon and ball furnished by Connecticut to John Jay, the Assembly passed a concurrent resolution on the 22d of June, which was

June 16. To the Senate:

"GENTLEMEN.—I herewith submit and earnestly recommend to your consideration, a memorial of the officers of this State, prisoners of war with the enemy, together with a letter from Col. Allison, representing the situation of these brave unfortunate men.[31]

I also take this opportunity of laying before you, a letter from Col. Peter Yates, and seven other field officers, of the militia of Albany County, dated the 20th ult. representing the state of the northern frontiers; and an act of Congress of the first instant, respecting extra supplies, which may be furnished by any of the States.

GEO. CLINTON."

Kingston, June 16th, 1780.

June 29. To the Assembly:

"GENTLEMEN.—Herewith I lay before you a circular letter from the President of Congress, of the 15th inst., several acts of Congress of the 17th, 21st and 23d inst. together with the President's letters accompanying the same; and the extract referred to in the act of the 23d; and also a letter from his Excellency General Washington, of the 27th instant, and two circular letters from the Committee of Congress, at Head Quarters, of the 19th and 23d instant;

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concurred in by the Senate the next day, reciting that such cannon and ball, amounting to £1527, 10s., "were applied to the use of the United States, who are now possessed of the same or the greater part thereof." That in 1775, the Provincial Congress of New York had supplied Connecticut with tents for their troops to an amount nearly equal to the foregoing sum, and suggesting that if agreeable to Connecticut, both accounts be charged to the United States, but if not so agreeable, then the resolution declared that New York would settle the claim of Connecticut, and pay the balance if any should be found due.

[31] The Senate and Assembly adopted a resolution on the 16th and 17th of June, 1780, respectively, authorizing the Governor to expend three thousand pounds for the relief of the prisoners of war mentioned in the message, and the Legislature promised to make provision for the payment of this amount, and also of sums already advanced by the Governor for the same purpose.

all which, I beg leave to recommend to your immediate consideration.

You will also receive for your information, copies of my letters to the President of Congress, and to the Committee at Head Quarters, of the 24th and 27th instant.

GEO. CLINTON."

Kingston, June 30th, 1780.

June 30. To the Senate:

"GENTLEMEN.—At the request of Major General Arnold, I herewith lay before the Legislature, for their perusal, the proceedings of the General Court Martial on his trial, together with his letter, which accompanied the same.

GEO. CLINTON."

Kingston, June 30th, 1780.

July 2. The Legislature adjourned without day.

THE VERMONT CONTROVERSY.

The Legislature, as a result of its deliberations on the Governor's suggestions relative to the Vermont controversy (*ante*, p. 76), submitted the matter to Congress by an act, chapter 24, passed October 21, 1779, which contained the following preamble:

"*Whereas* controversies have heretofore subsisted respecting a certain district of country on both sides of Connecticut river, commonly called the New Hampshire Grants, involving in some instances the right of soil, and in others both the right of soil and jurisdiction.

And Whereas, This State comprehends within its just and ancient limits, all that part of the said district which lies on the west side of the said river, and its rightful jurisdiction over the same, was fully confirmed by the authority of the king and privy council of Great Britain, then having the sole cognizance in such cases, in the dernier resort, by two certain adjudications the one in a controversy between the governments of New Hampshire and Massachusetts

Bay respecting the northern boundary of the latter, on an appeal by both parties from a decision of commissioners appointed to hear and determine the said controversy, in virtue of a commission under the great seal of Great Britain, bearing date on or about the third day of April in the year of our Lord one thousand seven hundred and thirty seven; and the other in a controversy between the governments of New Hampshire and New York, respecting the western boundary of the former, and the eastern boundary of the latter, which came judicially before the said king and privy council, by the authoritative acts of the governor and council of each, and by their mutual agreement and consent, the said last mentioned adjudication having been pronounced on the twentieth day of July in the year of our Lord one thousand seven hundred and sixty four, and afterwards duly published.

And Whereas, The former government of this State in the rightful exercise of their jurisdiction established the said district last described into counties by the names of Cumberland and Gloucester, Charlotte and Albany, and granted to its inhabitants and others considerable tracts thereof.

And Whereas, The animosities occasioned by the said controversies have, notwithstanding the said final adjudications again revived, and have lately proceeded so far, and risen so high, as to endanger the internal peace of the United States, which renders it indispensable for the Congress of the United States of America to interpose for the restoration of quiet and good order; and divers applications have been made to them as well on the part of this State, as of the State of New Hampshire for that salutary purpose.

And Whereas, Congress have accordingly made and published a certain act bearing date on the twenty fourth day of September last, among other things setting forth, that one of the great objects of the Union of the United States of America, is the mutual protection and security of their respective rights. That it is of the last importance to the said Union that all causes of jealousy and discontent between the said States should be removed, and therefore that their several boundaries and jurisdictions should be ascertained and settled; that disputes at present subsist between the States of Massachusetts Bay, New Hampshire

and New York on the one part, and the people of the said district called the New Hampshire Grants on the other, which people deny the jurisdiction of each of the said States over the said district, and each of the said States claim the said district against each other, as well as against the said people, as appertaining in the whole or in part to them respectively; it is therefore in and by the said act, among other things, resolved unanimously that it be and hereby is most earnestly recommended to the States of New Hampshire, Massachusetts Bay and New York, forthwith to pass laws expressly authorizing congress, to hear and determine all differences between them relative to their respective boundaries, in the mode prescribed by the articles of confederation, so that congress may proceed thereon on the said first day of February * * * at farthest: And further that the said States of Massachusetts Bay, New Hampshire and New York do by express laws for that purpose refer to the decision of congress all differences or disputes relative to jurisdiction, which they may respectively have with the people of the district aforesaid, so that congress may proceed thereon on the said first day of February next; and also to authorize congress to proceed to hear and determine all disputes subsisting between the grantees of the several States aforesaid with each other or with either of the said States respecting title to lands lying in the said district to be heard and determined in the mode prescribed for such cases by the articles of confederation aforesaid; and further to provide that no advantage be taken of the non-performance of the conditions of any of the grants of the said lands, but that further reasonable time be allowed for fulfilling such conditions; and it is thereby further unanimously resolved, that Congress will and thereby do pledge their faith to carry into execution and support their decisions and determinations in the premises in favor of which soever of the parties the same may be, to the end, that permanent concord and harmony may be established between them, and all cause of uneasiness be removed. And that congress will on the said first day of February next, proceed without delay to hear and examine into the disputes and differences relative to jurisdiction aforesaid between the said three States respectively, or such of them as shall pass the laws before mentioned on the one part and the people of the district aforesaid who claim to be a sepa-

rate jurisdiction on the other; and after a full and fair hearing, will decide and determine the same according to equity; and that neither of the said States shall vote on any question relative to the decision thereof. And congress do thereby pledge their faith to execute and support their decisions and determinations in the premises (as by the said act remaining among the records of congress will more fully appear reference thereunto being had).

To the end therefore that the said controversies may be finally extinguished and the tranquility of the said district be thereby restored, and harmony between this State and the States claiming the said district be established on a permanent foundation, agreeable to the provisions of congress in the premises."

1780. SEPTEMBER. LEGISLATURE, FOURTH SESSION.

GEORGE CLINTON, Governor.

FIRST MEETING.

Governor Clinton issued a proclamation on the 4th of August, 1780, convening the Legislature at Poughkeepsie on the 4th of September. A quorum did not appear until the 7th, when the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.— It was with regret I found myself obliged to convene you so early in the season; the present emergencies, however, you will be sensible, rendered your meeting at this time indispensable.

The hearing before Congress relative to our eastern boundary is to commence early in the present month, and as the delegates for the time being are the agents to manage the controversy on the part of this state, and the present delegation will soon expire, you will perceive the necessity of proceeding to an immediate election.[1]

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[1] September 12, the Legislature in joint session elected five delegates to Congress.

I am unhappy to inform you that notwithstanding the provision made for the defence of our frontiers, a part of them has again been desolated by a merciless enemy. For a particular account of these devastations, I must refer you to the papers I now deliver you. The force directed to be raised by the Legislature for the frontier service, when compared with the extent of country to be guarded, and with what has since appeared the strength of the enemy employed against it, you will discover to have been insufficient in the first instance, and it became less competent in consequence of deficiencies and by enlistments into the continental battalions. Allured by a generous bounty, the troops were easily induced to enter into other corps, where their time of service was prolonged only a few days, and in which they were not exposed to greater hardships or danger. To prevent as far as possible a diminution of this force, I ventured, although unauthorized by law, to retain on the frontiers part of the levies intended to reinforce the army, which I trust will receive your sanction, and upon a representation of the situation of the country to the commander-in-chief, his excellency, from an earnest desire to preserve those valuable settlements, detached for their defence part of the levies from the eastern states, and the whole brigade raised by this state as a reinforcement to the army. This, however, will be only a temporary relief, it being uncertain how long these troops will remain there. I must therefore recommend it to you to provide against the contingency of their removal, which will certainly take place upon the expiration of the time limited for their service.[2]

GENTLEMEN.— Notwithstanding the measures hitherto pursued, and although these states through the indulgence of heaven, abound with provisions, the army has not as

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[2] An act, chap. 4, passed September 29, 1780, provided for raising troops for the defence of the frontiers.

yet received seasonable and competent supplies. I now communicate to you letters from the committee of congress at headquarters, and the commander-in-chief, upon this interesting subject, and recommend them to your most serious attention, with the fullest confidence that nothing will be wanting on your part; and, that as far as the ability of this state extends, no means will be left unessayed to prevent the misfortunes which must inevitably result from a failure in the essential article of subsistence.[3]

GENTLEMEN.— When we reflect upon the present situation of our public affairs, it is evident our embarrassments in the prosecution of the war are chiefly to be attributed to a defect in power in those who ought to exercise a supreme direction, for while congress only recommend and the different States deliberate upon the propriety of the recommendation, we cannot expect a union of force or counsel. From this conviction, I take the liberty of submitting to you whether further means ought not to be devised for accelerating the proposed confederation, and thereby vesting congress with such authority as that in all matters which relate to the war, their requisitions may be peremptory. It is with pleasure I find this to have been the sentiment of a convention of committees from three states lately held at Boston, whose proceedings at their request I now lay before you.[4]

Hitherto the war has been carried on without decisive advantages on either side, and although it might be presumed that our enemies unsupported by any ally, and with every other power at least unfavorable to their cause, would have been convinced of their inability to withstand the united arms of France, Spain and America, and have

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[3] Supplies for the army were provided for by chap. 2, passed September 22, 1780.

[4] As a result of the Legislature's consideration of the proposition to increase the power of Congress, Philip Schuyler, John Sloss Hobart, and Egbert Benson were appointed commissioners to represent the State in a convention

withdrawn their armaments from our coasts for the defence of their own, we find them, however, obstinately persevering in the vain hopes of conquest. It behoves us, therefore, to preserve an unremitted zeal and spirit, and especially to endeavor by completing our continental battalions to establish a permanent force, sufficient with the divine blessing to bring this contest to a speedy and successful issue.[5] The generous aid from one, and the great exertions of both nations engaged in the war with us, ought to encourage and stimulate America to her utmost efforts.

GEORGE CLINTON.

Poughkeepsie, Sept. 7th, 1780.

SPECIAL MESSAGES.

September 8. To the Senate:

"GENTLEMEN.—I herewith submit and recommend to your consideration, a letter from Udny Hay, Esq., of the 7th instant, informing that he will soon be succeeded in his office of Deputy Quarter Master General to the Continental Army, requesting that some Legislative provision be made for ascertaining the damages sustained by the inhabitants of this State, and for liquidating their demands on that department; and suggesting the necessity of reviving and

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to be held at Hartford on the second Wednesday of the following November, with authority to propose and recommend, "all such measures as shall appear calculated to give a vigor to the governing powers equal to the present crisis," but their action was to be subject to approval by the Legislature.

This convention was held, and the Legislature approved its proceedings by a resolution adopted March 29, 1781. Another resolution adopted at the same time declared that "inasmuch as the agents of his Most Christian Majesty have already made contracts with individuals in this state, for supplying his fleet and army with provisions, therefore it is become unnecessary to appoint commissioners to attend the convention proposed to be held at Providence on the twelfth day of April next," and Governor Clinton was requested to notify Governor Trumbull accordingly.

[5] An act, chap. 14, to complete the quota of troops of this State to serve in the army of the United States during the war, was passed October 9, 1780.

amending the laws, made for obtaining fuel and teams for the public service.[6] Also a letter of the same date from that Gentleman, pointing out the embarrassments he experiences in the execution of his office of State Agent, arising from defects in the law, under which he is appointed, together with extracts of letters from his assistants, relative to the conduct of assessors. Also another letter from the same Gentleman, signifying his appointment as Deputy Commissary General of Purchases within this State to the Continental Army; and proposing a plan for laying up a magazine of provisions for the support of the army, and for supplying at the same time, the inhabitants of this State with salt, and preventing the evils which he apprehends will result from continuing to grant commissions, on the monies expended in the purchasing of supplies, under this appointment; and submitting the propriety of enabling him to adopt some more unexceptionable mode, for the payment of himself and his assistants, in this office.[7]

GEO. CLINTON."

Poughkeepsie, Sept. 8th, 1780.

September 11. Thanking the Senate and Assembly for their addresses.

September 13. To the Senate: Transmitting for the consideration of the Legislature, the petition of Mary Tenis and others.[8]

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[6] Several former acts relative to the impresses of teams, forage, timber, and fuel for the use of the army were revived and continued by chap. 8, passed October 5, 1780.

[7] Chap. 61, passed July 1, 1781, contained provisions relative to the State Agent.

[8] The Governor's communication relative to Mary Tenis and others resulted in chap. 5, passed September 30, 1780, which provided for the relief of certain distressed families in Tryon county. The act was extended to Westchester, and to other persons in Tryon county, by a supplementary act, chap. 38, passed March 26, 1781.

September 13. To the Assembly:

"GENTLEMEN.—With this message you will receive two acts of Congress, of the 12th and 24th ult., recommending to the several States to make compensation to the officers and soldiers, to them respectively belonging, for the depreciation of their pay, and for making further provision for the officers and soldiers of the Continental Army, together with a letter from three gentlemen deputed by the officers of the line of the State, who are now attending to represent to the Legislature, the distressed situation of the troops.[9] It may be proper to mention, that the measures adopted last session, for clothing and supplying the troops of this State with necessaries, have hitherto proved ineffectual, as this may evince the necessity of an immediate attention to the business.[10]

GEO CLINTON."

Poughkeepsie, 13th Sept., 1780.

September 13. To the Assembly:

"GENTLEMEN.—You will herewith receive a proclamation of his Excellency Jonathan Trumbull, Esq. Governor of the State of Connecticut, founded on an act of the Governor and Council of that State, repealing their inland embargo laws, together with his Excellency's letter accompanying the same.

GEO. CLINTON."

Poughkeepsie, 13th Sept., 1780.

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9 Four acts concerning the claims of troops were passed; chap. 7, passed October 4, 1780, to liquidate and settle the accounts of the troops of this State in the service of the United States; chap. 22, passed March 9, 1781, extending to other persons the provisions of the foregoing act; chap. 41, passed March 27, 1781, was a supplementary act on the same subject; and chap. 55, passed June 29, 1781, further extended the provisions of the first act.

10 Chap. 20, passed March 7, 1781, provided for the appointment of three commissioners to superintend the purchase of clothing.

September 14. To the Assembly:

"GENTLEMEN.—I herewith submit to your consideration, an act of Congress of the 26th ult. recommending to the several States, to take the most speedy and effectual measures, for bringing the new bills of credit into circulation,[11] and making provision for the payment of public debts, and for other purposes therein mentioned, together with the President's letter of the 3d instant, accompanying the same.

GEO. CLINTON."

Poughkeepsie, 14th Sept., 1780.

September 25. To the Senate:

"GENTLEMEN.—I have the honor of transmitting you a letter from his Excellency Jonathan Trumbull, Esquire, Governor of the State of Connecticut, of the 19th instant, enclosing an extract from the proceedings of the Council of Safety of that State. The subject of these papers, is of such interesting importance, as to demand your immediate attention.[12] GEO. CLINTON."

Poughkeepsie, 25th Sept., 1780.

September 27. To the Assembly:

"GENTLEMEN.—In addition to my message of the 25th inst. you will herewith receive a letter of the 14th instant, from John Carter, Esq., appointed to procure supplies of provision for the French fleet and army, at and before Newport, accompanying two letters of the 10th instant, one from Mons. De Taile, Intendant of the Fleet, and the other from Mons. De Crandchain, Intendant of the Army. [See note 12.] GEO. CLINTON."

Poughkeepsie, 27th Sept., 1780.

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[11] As to bills of credit, see chap. 16, passed October 10, 1780, cited in note 28 last session, *ante*, p. 97.

[12] This message, relative to army supplies, seems to have resulted in chap. 15, passed October 10, 1780, "authorizing certain persons to make contracts on behalf of this State, with respect to provisions to be procured within the same for public uses." The act had special reference to furnishing supplies for the French fleet and army.

September 30. To the Senate: Transmitting a letter from Robert R. Livingston relative to his continuance as a delegate in Congress.

October 3. To the Senate: Transmitting a letter from the President of Congress, with accompanying papers respecting the confederation of the United States.

October 6. To the Assembly:

Objejctions by the Council of Revision to a bill "for the amendment of the law directing the sales of forfeited lands."[13]

The Council objected to the bill because it would "expose the State to unnecessary expense and delay in seeking a discovery in chancery of the rents due, and then prosecuting in a court of common law to recover them, when the discovery and recovery might be made the business of one court." Also because "the original contract between the State and persons who have purchased forfeited estates, is materially altered; such persons being thereby subjected to a penalty created posterior to the contract, which in the opinion of this Council, is repugnant to the first and plainest principles of justice."

Other objections relate to procedure and questions of policy.

October 7. To the Senate:

"GENTLEMEN.—The distressed situation of several families on the frontiers, and in other parts of this State, reduced to extreme indigence by the operations of war, and the ravages of the enemy, demands the attention of the Legislature. A list of persons, under these circumstances, of Peterborough in the German Flatts District, in the County of Tryon, will be herewith delivered to you. [See note 8.]

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[13] This bill, relative to the sale of forfeited lands, was passed over the veto, and became a law, chap. 13, on the 7th of October, 1780.

To give security to the settlements on our Northern Frontier, I found it necessary, during the course of the last summer, to direct the erecting of a block house at Palmertown; a letter with an account of the manner in which this business has been conducted, and of the expenses thereby incurred, is herewith transmitted to you; and I have to recommend, that provision be made for discharging the same.[14]

GEO. CLINTON."

Poughkeepsie, 7th October, 1780.

October 8. To the Senate:

"GENTLEMEN.—I herewith refer to your consideration, a letter of the 23d ult. which I have just received from Major Tallmadge of Col. Sheldon's Light Dragoons, stationed near the lines in Westchester County, respecting certain abuses committed there.

GEO. CLINTON."

Poughkeepsie, 7th October, 1780.

October 9. To the Assembly:

Objections by the Council of revision to a bill "for the appointment of a Council to assist in the administration of the government during the recess of the Legislature."

"The Council object to the said bill, as inconsistent with the spirit of the Constitution and the public good.

1st. Because, to take the several measures in the bill directed to be taken, the person administering the Government, with the Council therein provided, must exercise the powers of legislation; which by the Constitution, is vested in the Senate and Assembly, and cannot by them be delegated to others.[a]

[14] Chap. 49, passed March 30, 1781, placed one thousand pounds at the Governor's disposal for general purposes, including the erection or completion of fortifications.

[a] Const. 1777, § 2.

2nd. Because the person administering the government is by the bill subjected, in the execution of his office, to the control of a Council, when by the Constitution, it is expressly ordained, determined and declared, *that the supreme executive power and authority of this State shall be vested in a Governor.*[b]

3rd. Because the said bill is not only repugnant to the spirit and letter of the Constitution, but should the same become a law, would, in the opinion of this Council, tend to embarrass government, and destroy its present energy."

The bill was not passed over the veto.

October 10. The Legislature adjourned to the second Wednesday (10th) of January, 1781.

SECOND MEETING.

Governor Clinton issued a proclamation on the 25th of November, convening the Legislature at Albany on the 2d of January, 1781. A quorum did not appear in both houses until the 31st, at which time the Governor sent the following

MESSAGE.

"GENTLEMEN.—I have the honor of laying before you with this message, the several acts of Congress, and other papers received since your adjournment, which claim the immediate consideration of the Legislature.[15]

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[b] Const. 1777, § 17.

[15] This part of the message was referred to a committee in the Assembly, and upon its report several acts were passed embodying suggestions contained in the papers accompanying the message. These included, chap. 49, passed March 30, 1781, containing a further provision for compensation and expenses of delegates in Congress; chap. 20, passed March 7, 1781, providing for commissioners to procure clothing; chap. 24, passed March 10, 1781, "more effectually to collect the deficiencies in assessments of wheat, and to lay an embargo on the exportation of flour, meal and wheat out of this State;" chap. 29, passed March 15, 1781, explaining the last act; and chap. 54, passed July 29, 1781, for obtaining a supply of flour for the army.

It is with the utmost concern that I am again under the necessity of calling your attention to the frontier settlements. The formidable force operating against them, and the extensive ravages lately committed in different quarters, fully evince the necessity of making the most effectual provision for their defence before the opening of the spring.[16]

The distress of our troops for want of clothing also demands your early and serious attention, and calls for every exertion to procure them a comfortable supply. By his excellency the commander-in-chief's letter of the 10th of November, you will perceive that no dependence is to be made that those expected by the continent will arrive in season; and I am sorry to inform you that the measures adopted by the State have hitherto proved abortive. [See note 10.]

It may be proper to mention to you, that agreeable to the law for that purpose, I have issued my orders for raising the number of men necessary to complete our quota of troops to serve in the army of the United States during the war; but from a defect in the act, there is reason to apprehend that some of the classes may be preferring their present ease to the public service, because delinquent; I therefore submit to the Legislature the propriety of enacting such amendments to the law as to render it more effectual.[17]

GEO. CLINTON."

Albany, January 2d, 1781.

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[16] Three acts provided for raising troops for the defence of the State, namely, chap. 23, passed March 10, 1781; chap. 32, passed March 20, 1781, providing for two regiments and offering bounties of unappropriated lands; and chap. 60, passed July 1, 1781, for a further levy of troops for the defence of the State.

[17] This suggested amendment to the act of 1780, chap. 14, for raising additional troops, was made by chap. 18, passed February 21, 1781, which provided a more effectual remedy against delinquents.

SPECIAL MESSAGES.

February 5. To the Senate:

"GENTLEMEN.—In addition to my message of the 2d ult. I herewith communicate to the Legislature, a letter from Congress of the 15th ult. with an estimate of the sums requisite to be furnished by the several States, for the immediate pay of the army; and an act of Congress of the 8th ult. requiring from the different States, the sums of specie therein mentioned, for the use of the officers in captivity in New York and on Long Island, together with the President's letter accompanying the same.

I also conceive it my duty to lay before you, an act of the 8th ult. recommending the exercise of the law of retaliation in the treatment of prisoners; that such provision may be made, as shall appear necessary for carrying the same into effectual execution within this State.

GEO. CLINTON."

Albany, February 5th, 1781.

February 6. To the Assembly:

"GENTLEMEN.—I refer to your consideration a letter dated yesterday, from Colonel Jacob Klock and others, on behalf of the inhabitants of Tryon county, stating their distressed and defenceless situation, and the necessity they will be under of abandoning that part of the State, unless measures are adopted for their protection. I have, therefore, to recommend their case to your immediate attention, and that such provision may be seasonably made for the defence of the frontiers, as will induce the inhabitants to continue in their settlements. [See notes 8 and 16.]

GEO. CLINTON."

Albany, 6th February, 1781.

February 10. To the Legislature:

"GENTLEMEN.—You will receive with this message, the copy of a letter of the 19th ult. from Col. Blaine (Commis-

sary General of Purchases) to Congress together with the President's letter, covering an order for the transmission of the same.

By the knowledge you have of the situation of the troops in this quarter, and the information contained in these papers, you will perceive the absolute necessity there is of immediate and vigorous exertions, to prevent the dreadful consequences which will inevitably ensue, from a want of subsistence. GEO. CLINTON."

Albany, February 10th, 1781.

February 10. To the Assembly: Transmitting a petition of Catherine Snell, Gertrude Garter, and Anna Lower. (See note 8.)

February 22. To the Senate:

"GENTLEMEN.—I refer to your consideration, a letter of the 3d instant from Col. William Malcom, requesting an advancement of pay from the treasury of this State, for the brigade of levies lately under his command; also a petition of the principal inhabitants of Kingsland and the German Flatts Districts in Tryon County, of the 18th instant, together with a letter from Col. Jacob Klock, requesting that two companies, one of rangers and another of Indians, be raised and employed for the defence of their frontier; and a petition from Col. Peter Bellinger and Captain Henry Herder, for the appointment of William Petri, as a surgeon for Forts Herkemer and Dayton, in the same County; and also a petition of the 6th instant, from William Moulton and others, for a grant of unpatented lands on the borders of Lake Champlain; and a petition of 5th May last which I have just received, from the freeholders and inhabitants of the Half Moon District, for ascertaining the boundary line between that district and the Schenectady Church Lands.

GEO. CLINTON."

Albany, 22d February, 1781.

February 23. The Senate and Assembly respectively, adopted, on the 21st and 22d of February, the following concurrent resolutions:

"*Resolved,* That it be recommended to his Excellency the Governor, forthwith to issue his proclamation, under the act, entitled 'an act authorizing certain persons to make contracts on behalf of this State, with respect to provisions to be procured within the same, for public uses,' for laying an embargo on the exportation of flour, meal and wheat, out of this State, to take effect on the first day of March next; that it be recommended to his Excellency the Governor, to direct the state agent to call on the Continental army or the militia of this State, or to employ such persons as he may deem proper for the purpose of seizing all flour, meal and wheat attempted to be exported contrary to the said embargo; that it be recommended to his excellency the Governor, in all cases of warrants of impress issued, or to be issued by him to the said agent, to apply for a force from the continental army, or to order out the militia of this State, if he shall deem it necessary, to aid in the execution of such warrants.

And Whereas, There is great reason to apprehend that great abuses will be committed under the pretext of purchasing and exporting flour, meal or wheat, for the use of the French fleet and army; *And Whereas,* information hath been received, that it was intended that such flour, meal or wheat, purchased for the use last aforesaid, should be stored within this State.

Resolved, That his excellency the Governor be requested to direct the said agent, in the execution of a general warrant of impress to be issued for the purpose, to impress all such flour, meal or wheat, which may be attempted to be exported before the said first day of March, and to seize such as may be attempted to be exported after the said first day of March, unless the persons exporting the same shall produce a license for the exportation thereof, and that his excellency be requested not to grant any license for the purpose aforesaid, until he shall have requested of and be informed by the commanding officer of the said French fleet or army, who is the principal purchasing agent within this State on their part, and to what amount of the said articles he and his assistants are directed to purchase, and whether the same is to be imme-

diately exported out of this State or not, and to request of the said commanding officers to give directions to their agents, that they employ no persons to make any such purchases, unless they be approved of by him, and also that they return to him the name of every person now by them so employed within this State, and the quantity to be purchased by each person, to the intent that none be permitted to make such purchases, other than those whose fidelity and attachment to the cause is of general notoriety. That it be recommended to his excellency the Governor, to employ such and so many persons in whom he can confide, in the different counties, as he shall deem necessary, to inquire into the purchases suggested to be made for the use of the said fleet or army, and that the Legislature will provide for the expense thereof; that where, from the report of the said persons, or otherwise, it shall appear to his excellency the Governor, that any persons under a pretext of purchasing for the said fleet or army, shall have purchased flour, meal or wheat, and not be thereunto properly authorized, or being so authorized shall have purchased a greater quantity than such person was authorized to purchase, the whole shall be deemed as purchased for sale, and subject to be impressed."

The Governor thereupon sent the following message to the Assembly:

"GENTLEMEN.—It is with great regret I find myself reduced to the necessity of thus publicly declaring, that I conceive a compliance with the requisitions contained in the concurrent resolutions of the honorable the Senate and Assembly, of the 21st and 22d instant, would be repugnant to law, and inconsistent with my duty.

By the act authorizing warrants of impress, they are to be granted only on certain emergencies or causes which might arise, but could not be defined or expressly provided for by law.

The impress requested by your resolutions is not founded on such emergency, but clearly intended to prevent, in the first instant, the exportation of flour, meal, and wheat, out

of this State, and to serve as an auxiliary to the embargo law when revived.

Besides, if this law should be revived by proclamation, and the impress granted in the manner requested, the persons thereby affected would either be exempted from the penalties annexed to offences, and entitled to receive pay for the articles impressed, or be arbitrarily divested of their property, without the benefit of a trial by jury, and thus the design of the law would in either case be defeated.

I cannot omit mentioning, that after the explicit communication of my sentiments to the gentlemen of the Senate, appointed to confer with me on this subject, I entertained a hope that such provision would have been made for carrying the intentions of the legislature into execution, as would have been clear of objection.[18]

GEO. CLINTON."

Albany, 23d February, 1781.

February 24. To the Assembly:

"GENTLEMEN.—You will receive with this message two acts of Congress of the 3d and 7th instant, recommending it to the several states to vest Congress with a power of levying duties on the importations of foreign merchandise and on all prizes and prize goods, for the purpose of raising a fund for the discharge of such debts as are or may be contracted on the faith of the United States, for the support of the present war, together with the President's letter of the 8th instant. From the importance of the measures recommended by these resolutions, I doubt not they will engage your earliest attention.[19]

GEO. CLINTON."

Albany, 24th February, 1781.

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[18] The Legislature's suggested revival of the impress act by proclamation resulted in the enactment of chap. 24, passed March 10, 1781, among other things laying an embargo on the exportation of flour, meal and wheat out of this State. This act was explained by chap. 29, passed March 15, 1781.

[19] The suggestion in relation to foreign duties was embodied in chap. 31,

February 27. To the Assembly: Transmitting a letter from General Washington, dated the 19th of February, in reply to a letter from Governor Clinton to him on behalf of the Legislature, dated the 14th, and relating to the distressed situation of the frontiers, and the danger that the inhabitants would abandon their habitations. (See note 16.)

The following is General Washington's letter:

"Head Quarters, New Windsor, February 19, 1781.

SIR.—I am honored with your Excellency's letter of the 14th instant, in behalf of the Legislature, with the copy of one of the 5th to Congress. I beg to assure the Legislature of the high sense I entertain of the honor they do me by their confidence in this communication—while I deplore the melancholy picture given of the distress of the State which I have every reason to believe from the facts that have fallen within my own observation is not exaggerated.

I sincerely wish it were in my power to comply with the request of the State for leaving its two regiments for the defence of the frontier next campaign; but I should not merit its confidence, if I were to flatter it with an expectation which may probably be disappointed. The reduction of the number of our regiments, if they were completed would scarcely give us a force adequate to a vigorous offensive campaign which is to be hoped will take place—towards which, proposals have been made and engagements entered into on my part. But we have too much room to fear the regiments of several of the states will be far from complete, which will in the case I have mentioned, render the collection of our whole force the more indispensable.

Situated as I am, I can only say that I anxiously wish it were in my power to give security to the frontier of all the states—that I sensibly feel for the peculiar circumstances

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passed March 19, 1781, authorizing Congress to levy a duty on foreign merchandise imported into this State, but the act was not to take effect until similar statutes had been passed by other States, which fact was to be announced by the Governor's proclamation.

of this—that I shall be happy if practicable to give it effectual protection and relief—but cannot promise the practicability of it. Much will depend upon the operations of the campaign; if they have for object any decisive enterprise, we shall be obliged to employ all our force in it; if they are of a defensive kind, the protection of the frontiers, will be attended to in a manner equal to their importance, and I hope successfully.

Our stock of ammunition is more scanty than your Excellency can have any idea of, but of this stock, small as it is, I shall order a part to be deposited at Albany for the purpose you mention.

At present the regiments of artillery are extremely reduced, and without knowing what will be their state at the opening of the campaign, I can give no positive answer to the application on this head, but I think it probable it will be in my power to comply with it.

The want of provision is unfortunately an evil, which every part of the army experiences, and must have fatal consequences, unless the states can hereafter generally comply better with the requisitions of Congress, or some other more competent mode can be adopted, than has hitherto obtained. But with respect to the garrison of Fort Schuyler, 'till your letter arrived I had reason to suppose, it had had a supply, which would suffice 'till May. The Commissary General shall be directed to apply to the Magazine at Richmond, or any other where relief is to be procured.

I beg your Excellency to assure the Legislature of the high respect I entertain for them and the gratitude I feel for the support I have upon all occasions experienced from the state. With every sentiment of personal respect and esteem, I have the honor to be Your Excellency's most obed't and Humble servant.

GO. WASHINGTON."

His Excellency Governor Clinton.

February 27. To the Assembly: Announcing his intention to prorogue the Legislature if the Assembly should concur in the resolutions adopted by the Senate on the 21st of February, in relation to the New Hampshire grants.[20] (For the text of the message see note *post*, p. 143.)

February 28. To the Senate:

"GENTLEMEN.—You will receive herewith a letter from Brigadier-General James Clinton, representing the dangerous and critical situation of this department, for want of provisions. Impressed with the necessity of immediate exertions, to prevent the evils apprehended, I doubt not you will give this business the earliest attention. [See note 15.]

GEO. CLINTON."

Albany, 28th February, 1781.

February 28. To the Assembly:

"GENTLEMEN.—I have the honor of communicating to you, his Excellency General Washington's letter of the 24th instant, in answer to mine of the 20th, written in consequence of the request of the legislature, signified by their resolutions of the same date.

GEO. CLINTON."

Albany, 28th February, 1781.

Following is the resolution referred to in the message:

"*Resolved*, That his excellency the Governor be requested to write, (by express) to his excellency General Washington, informing him of the danger to which the frontier inhabitants will be exposed, if the troops which his excellency the General has ordered to West Point, are withdrawn from the frontiers, and that there is great reason to apprehend that the frontier inhabitants will immediately, on the removal of those troops, remove into the interior part of the country."

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[20] For further executive and legislative action, on the Vermont controversy, see *post*, p. 135.

The following is Governor Clinton's letter to General Washington:

"ALBANY, 20*th February*, 1781.

SIR.—On the 14th instant, I had the Honor of addressing a letter to your Excellency by order of the Legislature, representing the distressed situation of our frontiers and the dangers that the inhabitants would abandon their habitations. Since my arrival here yesterday, I find their fears increased, in consequence of your orders for six companies to march immediately to Head Quarters and of reports which prevail, that the enemy were preparing to cross the lakes, which are now become passable on the ice, and I have this day been requested by both Houses, to write to you again upon the subject and it is still their earnest wish that the whole State Line should remain in this quarter.

I am apprised of the delicate situation in which this application must place your Excellency, anxious to afford every possible relief to these unhappy people, at a time when you may be convinced that the general interest of the Confederacy requires that its force should be directed to other objects. The weak and distressed situation of the State must be an apology for the Legislature in this request, and I have the fullest persuasion that we shall receive from you every aid which you can consistently grant. I have the Honor to be &c. &c.

GEO. CLINTON."

His Excellency Genl. Washington.

March 8. To the Assembly:

"GENTLEMEN.—I refer to your consideration a letter of the 3d instant, from Morgan Lewis and Udney Hay, Esquires, late deputy quarter masters general, and Jacob Cuyler, Esquire, late deputy commissary general to the army of the United States, and have to recommend that

some mode be adopted to obviate the difficulties mentioned in this letter, and to render a settlement of their accounts more practicable.

GEO. CLINTON."

Albany, 8th March, 1781.

March 9. To the Senate:

Objections by the Council of Revision to a bill "more effectually to collect the deficiencies in assessments of wheat, and to lay an embargo on the exportation of flour, meal and wheat out of this State."[21]

The Council object to the said bill becoming a law of this State,

"1st. Because, without any apparent necessity, it imposes an embargo on meal, wheat and flour, the sole object of the embargo being declared to be, the enabling the State Agent to collect a deficiency, which must at this time, (if the credits mentioned in the said bill are given) be extremely small, if any; and yet the embargo may continue a long time after the whole quantity is collected, for want of timely returns being made—whereby, the course of commerce will be stopped, the price of our staple commodities lessened, to the injury of individuals, and the discouragement of Agriculture—the State, already groaning under heavy burthens, impoverished and probably embroiled with their neighbors, who, by laying similar embargoes in return, may retain a very considerable balance due to the subjects of this State for flour already exported, the fair trader be discouraged, and commerce put in the hands of those who elude the law—individuals, who have made contracts with the neighboring States, on the suspension of

[21] This bill, relative to deficiencies in the assessment of wheat, and an embargo on certain products, was passed over the veto, and became a law, chap. 24, on the 10th of March, 1781.

the late embargo law, be ruined and all confidence in government destroyed; and this, without necessity, the penalties in the bill being amply sufficient to procure the deficiencies, if any there be, without this general shock to the trade of the State.

2d. Because the law makes no provision for allowing an exportation, even if the necessity of our army, or the fleets and armies of our ally, should render it necessary to export for their use; for tho' exporting without license, is rendered penal, yet no power is given to grant such licenses, the law empowering the Governor, with two members of the Legislature, to grant licenses, being revived only so far as relates to the penalties therein expressed.

3d. Because the general warrants of impress, which the Governor is desired to issue, puts the whole of the wheat and flour of the State in the hands of the agents; who are only to be restrained by a mere instruction (which does not appear on the warrant) from executing it agreeable to the tenor of the law, and subject to no penalty for disregarding the instruction.

4th. Because, tho' the embargo is not to take place till six days after the passing of the said act, yet warrants are to issue, as is said 'in order to render the embargo more effectual,' immediately, and to be executed before the embargo takes place, or a reasonable notice of laying the same, be given; by which means, the innocent proprietor of wheat and flour, seized by virtue of such warrant, and before he could know of the law, is compelled to receive what is called the usual certificate, that is a certificate only receivable in taxes, at the rate of forty dollars for one of the bills of credit, issued in consequence of the act of Congress, of the 18th of March last, altho' by the late law of the State, every dollar of such emission, in consequence of the said act, is declared to be equal in value to 75 dollars—

thus depriving him of near one half of the value of such wheat and flour, besides obliging him to receive certificates, that can be of no immediate use to him."

March 12. To the Assembly: Transmitting a letter from Joseph Ketchum and Joseph Togues De Poinnierre, respecting the exportation of a quantity of flour, purchased by them under a contract with the Commissary General of the French fleet at Newport.[22]

March 19. To the Assembly:

"GENTLEMEN.—I have the pleasure of communicating to the Legislature, an act of the Honorable the Congress of the 11th inst. announcing that the articles of Confederation and perpetual union between the thirteen United States are acceded to and formally and finally ratified by all the States. This important event, as it establishes our union, and defeats the first hope of our enemy, cannot but afford the highest satisfaction; and I trust that this state will be as distinguished for its faithful adherence to this great national compact, so essential to the peace and happiness of America, as it has hitherto been for its exertions in the common cause.

GEO. CLINTON."

Albany, 19th March, 1781.

March 19. To the Assembly: Transmitting a letter of the 11th of March from the New York delegates in Congress, in answer to a letter of the 3d of February to Congress, written by the Governor on behalf of the Legislature.

March 21. To the Assembly: Transmitting a letter from Governor Trumbull of Connecticut, with accompanying papers. (See note 4.)

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[22] This message resulted in an act, chap. 29, passed March 15, 1781, explaining chap. 24, passed March 10, 1781, relative to deficiencies in assessments of wheat, and to lay an embargo on the exportation of flour, meal and wheat out of the State.

March 26. To the Senate:

Objections by the Council of Revision to a bill "to relieve certain persons in the county of Charlotte, from the penalty of an act entitled 'an act for raising levies to reinforce the army of the United States.'" [23]

"The Council object to the said bill becoming a law of this State:

1st. Because the commutation thereby offered to the delinquent classes in the regiment of militia, in the county of Charlotte, in discharge of the penalties by them incurred, is partial, and not calculated for the public good.

2d. Because no reasons are adduced in the said bill for such partial indulgence; and it will therefore afford to other delinquent classes, an equal claim to the same exemption.

3d. Because the said bill, by exempting those classes from paying a double bounty, impliedly pardons the officers whom it would otherwise affect, the penalties and punishments incurred by them, in neglecting to have those classes doubly assessed; thereby giving encouragement to others to be guilty of similar offences, to the great injury of the public service."

March 27. To the Senate:

Objections by the Council of Revision to a bill "To suspend certain parts of an act entitled 'An act for raising by tax a sum equal to one hundred and fifty thousand dollars in specie,' and of an act entitled 'an act approving of the act of congress of the eighteenth day of March one thousand seven hundred and eighty relative to the finances of the United States and making provision for redeeming the proportion of this State of the bills of credit to be emitted in pursuance of the said act of congress,' and for other purposes therein mentioned." [24]

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[23] The Charlotte County relief act was passed over the veto and became a law, chap. 44, on the 27th of March, 1781.

[24] This bill, suspending certain finance acts, was passed over the veto, and became a law, chap. 43, on the 27th of March, 1781.

"The Council object against the said bill becoming a law of this State,

Because the resolution of Congress of the 26th of August last, upon which the said bill is predicated, directs only that the value of the sums due to creditors of the United States, shall be ascertained according to the current value of Continental bills of credit compared with specie, at the time the money became due, at the place where the supplies were furnished, whereas this bill in the second enacting clause thereof, authorizes the person administering the government, together with any five members of the Legislature, not only to devise any mode or plan for ascertaining the value of the sums due to the creditors of the United States within this State, agreeable to the direction of the said resolution, but further authorizes the person administering the government, with any five members of the Legislature, to ascertain the prices to be allowed to such creditors, upon the settlement of their respective accounts; which, not being directed by the said resolution, will not be binding upon Congress, cannot be received as a rule of conduct by their servants, in adjusting the public accounts within this State; and will therefore defeat the business which it is intended to effect; besides the vesting a power in the person administering the government, and any five members of the Legislature, or in any persons whatsoever, to destroy the original contracts between the subjects of this State and the public officers, by arbitrarily fixing new prices for the articles furnished, gives this bill the insidious operation of an *ex post facto* law, opens a door destructive to property and public confidence, and is in the opinion of this Council, highly injurious to the rights of the people, and against the public good."

March 29. To the Senate:

Objections by the Council of Revision to a bill "to prevent evil minded persons supplying the enemy with provisions, and for other purposes therein mentioned."

"The Council object to the said bill becoming a law of this State,

1. For altho' by the second enacting clause of the said bill, a power is given to a grand jury of the County of Dutchess, to inquire into and present any offences under the said bill heretofore committed, or hereafter to be committed in the county of Westchester; and also power to a Grand Jury of the County of Albany, in like manner to inquire into and present any offences, under the said bill heretofore committed, or hereafter to be committed in either the Counties of Tryon or Charlotte, and directs that the petit jurors for the trials of all such indictments shall be returned from the city and County where the indictment shall be taken; yet by the law, there is no express power vested in the Courts in which the indictments are to be found, to try the offenders, by which means, the law is imperfect, and will not answer the designs of the Legislature.

2. For that the third and last enacting clause of the said bill, only giving a right to seize in case of the goods, wares and merchandise, coming immediately from any part of this State within the power of the enemy, will not answer the design of the Legislature; it being an undoubted fact that the trade intended to be prevented by the said bill is carried on from this State through the States of Connecticut and New Jersey, against which trade the bill makes no provision.

3. For that by the same clause, any person or persons seizing goods, as coming from the enemy, is justified in immediately converting such goods to his or their own use; and should a seizure be made of any considerable property, not subject to seizure by any person or persons, not of sufficient ability to answer in damages, the innocent proprietor is unjustly deprived of his property, and is without a remedy."

The bill was not passed over the veto.

March 29. To the Assembly, transmitting a letter from General James Clinton. See special message to the Senate of February 28. (See note 15.)

March 29. To the Assembly:

Objections by the Council of Revision to a bill "to amend an act entitled 'An act regulating the militia of the State of New York."

"The Council object against the said bill becoming a law of this State,

1st. For that by the third section, all persons neglecting or refusing to march after due notice, are to be tried by a court martial, to be convened by a commanding officer of a regiment, composed of such members as he shall nominate and appoint, who are authorized to impose any fine or inflict any corporal punishment, not extending to life or limb, at their discretion; whereby the citizens of this State are subjected to fines and ignominious punishments, by the sentence of a court not even composed by detail, according to ordinary military usage, but by the arbitrary will and nomination of the commanding officer of a regiment, and are thus deprived of that security against partiality, private pique and resentment, wisely provided against by the act regulating the militia of this state, passed the 11th day of March, 1780, making these offences cognizable only by general court martial; in which case, the sentences of the court are subject to the control of the person administering the government.

2dly. Because the fines which may be imposed by such regimental court, are to be distributed among such of the commissioned officers and privates, as shall have done their duty, thereby giving an unequal and unjust recompense; as those regiments, who, in greatest numbers and with prompt alacrity, obey the calls of their country, will be least benefitted, whilst those of other regiments, will, by this distribution, be rewarded beyond proportion or

their merits, and thus it will become the interest of some to encourage others to persist in their neglect of duty.

3dly. Because, although the state, in time of danger, is entitled to the personal services of its subjects, for its defence, yet this service ought to be executed in such manner as to operate as nearly equal as possible. Whereas, by the present bill, the most extensive and most popular districts may contribute the least, as the fines for the neglect of duty are not to be applied for the benefit of the community at large, but distributed among the individuals of such districts, which is no more than a mere change of property from one individual to another, and by collusion may even lose the effect of a punishment."

The bill was not passed over the veto.

March 31. The Legislature adjourned to meet the first Wednesday (6th) of June, at a place to be designated by the Governor.

THIRD MEETING.

Governor Clinton issued a proclamation on the 8th day of May, convening the Legislature at Poughkeepsie on the 6th of June. A quorum did not appear until the 16th.

SPECIAL MESSAGES.

June 16. To the Assembly:

"GENTLEMEN.—The acts of Congress and other papers of a public nature, received during your recess, which I have the honor to lay before you with this message, contain all the information I have at present to communicate to the Legislature. They relate to matters of the greatest moment, and I flatter myself, will receive a suitable degree of your attention. [See note 20.]

I have directed returns to be made, as well of the regiments of this State, serving in the army of the United States, as of the levies raised for the immediate defence of the State, in consequence of the acts passed at your last

meeting. These returns, when received, I shall lay before you, in order, that if the Continental Battalions should appear still deficient, and the levies inadequate to the intended purposes of defence, the legislature may take such measures for completing the former, and augmenting the latter, as may be conceived necessary.

GEO. CLINTON."

Poughkeepsie, June 16th, 1781.

June 18. To the Assembly:

"GENTLEMEN.—I have the honor of communicating to the Legislature with this message, two letters of the 16th instant from his Excellency the Commander-in-Chief, pointing out the necessity there is of immediately completing the regiments of this State, in the service of the United States, together with another letter of the same date, from his Excellency, recommending it as a matter of the first importance, that measures be taken for the payment of the troops of the New York line. Mr. Pierce, the Pay Master General of the Army, is attending; and will give the Legislature such information, on this subject, as may be deemed necessary.[25]

GEO. CLINTON."

Poughkeepsie, 18th June, 1781.

June 19. To the Assembly: Transmitting several letters and papers received from Col. Hay.

June 25. To the Senate: Transmitting a letter from General Washington.

June 25. To the Senate:

"GENTLEMEN.—In addition to my message of the 19th instant, I have now to refer to your consideration, several

[25] Chap. 55, passed June 29, 1781, provided for the further direction of the auditors appointed to liquidate and settle the accounts of the troops of this State in the service of the United States; and chap. 60, passed July 1, 1781, provided for a further levy of troops.

letters and other papers transmitted to me by Colonel Hay, pointing out difficulties which attend the execution of his office of State Agent.[26] I also herewith transmit for the information of the Legislature, general returns of provision and forage procured under his direction, to the 1st of May last, together with accounts current of specific supplies, between the United States and this State.

GEO. CLINTON."

Poughkeepsie, 25th June, 1781.

June 26. To the Assembly:

"GENTLEMEN.— You will herewith receive the returns alluded to in my message of the 17th instant, which I have not been enabled to prepare at an earlier day. I also take this opportunity of communicating to the Legislature, a resolve of Congress of the 13th instant, recommending to the several States to make provision for settling the accounts for the depreciation of the pay of the officers of the hospital and medical departments, and for paying the balances that may be found due to them.[27]

GEO. CLINTON."

Poughkeepsie, June 26, 1781.

June 30. To the Assembly:

Objections by the Council of Revision to a bill "for raising a tax in specie, and a tax in paper currency."[28]

"Because it does not correct the inequalities in the distribution of the tax for raising 2,500,000 dollars, referred

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26 The Legislature adopted a concurrent resolution authorizing the seizure of supplies for army use, and containing specific directions as to accounts, and making provision for the settlement of claims for property thus taken.

27 This recommendation was embodied in an act, chap. 28, passed April 6, 1782, which provided for the pay of medical and hospital officers.

28 This bill, providing for a tax in specie and a tax in paper currency, was passed over the veto, and became a law, chap. 57, on the 30th of June, 1781.

to in the said bill, among the several towns, manors, precincts and districts; but makes the apportionment of that tax, the rule for adjusting the proportions which the several districts shall raise of the future tax, without affording such district as may have been aggrieved, any means of redress.

2. Because under the present mode of taxation, no remedy remains to the people, against an unjust and unequal distribution of the county quota, among the several districts, but removing the supervisors, who may have made the same; of this, the bill under consideration, deprives them, by rendering an apportionment made previous to the last election of supervisors, the rule by which a subsequent tax is to be collected."

July 1. The Legislature adjourned without day.

THE VERMONT CONTROVERSY.

The movement for the independence of Vermont has already been described to some extent in former notes, pp. 47, 102, and in the executive communications from which those notes are derived. The present note is intended to set forth additional correspondence and legislative action relative to the matter.

Letter from Mr. Chittenden to Governor Clinton.

STATE OF VERMONT, IN COUNCIL,
ARLINGTON, *Nov'r 22d*, 1780.

SIR.— Inclosed I transmit your Excellency a copy of my letter to Congress of the 25th of July last, and on a full examination of the controversy between the State of New York and this State, and duly considering the present peculiar circumstances of both States, I am induced to make a positive demand on the Legislature of the State over whom you preside, to give up and fully relinquish their claim to jurisdiction over this State. And also propose to them to join in a solid union with this State for

mutual defence against the British Forces, which invade the American States, particularly such part as make incursions on the frontiers of the two States, from the Province of Quebec.

Such a union for the reciprocal advantage of both governments I am willing to ratify and confirm on the part of this State.

Colonel Ira Allen who delivers this, waits your answer to these proposals.

In behalf of the Council and General Assembly, I have the Honor to be with great esteem, your Excellency's very obedient Humble Servant,

THOS. CHITTENDEN.

His Excellency, George Clinton Esquire; Governor &c. &c. of the State of New York, to be communicated to the Legislature thereof.

The following is Mr. Chittenden's letter to Congress:

BENNINGTON, 25*th July*, 1780.

SIR.—Your Excellency's letter of the 10th ult. inclosing several acts of Congress of the 2d and 9th of the same month, I accidentally received the 6th instant, have laid them before my Council and take their advice thereon, and now beg your Excellency's indulgence while I treat on a subject of such moment in its nature, and which so nearly concerns the citizens of this State. However Congress may view those resolutions, they are considered by the people of this State, as being in their nature subversive of the natural rights which they have to liberty and independence, as well as incompatible with the principles on which Congress ground their own right to independence, and have a natural and direct tendency to endanger the liberties of America, which have hitherto been defended at great expense both of blood and treasure.

Vermont's right to independence has been sufficiently

argued, and the good consequences resulting to the United States from its first assuming government clearly vindicated in sundry pamphlets, which have been officially laid before Congress.

I beg leave to refer your Excellency to "Vermont's Appeal" &c. particularly from the 32d to the 42d page, in which among other things is contained, a particular answer to the resolutions of the 24th of September, referred to in the resolves of the 2d of June last, and a denial of the authority of Congress over this State, so far as relates to their existence as a free and independent government.

I find notwithstanding by a resolution of the 9th ult. that Congress have assigned the 2d Tuesday of Septem'r next to judge absolutely of the independence of Vermont as a separate jurisdiction. Can Congress suppose that this government are so void of reason as not to discern, that the resolves of the 2d and 9th of June aforesaid (so far as the authority of Congress may be supposed to extend to this State) are directly levelled against their independency.

Vermont as before mentioned, being a free and independent State, have denied the authority of Congress to judge of their jurisdiction. Over the head of all of this, it appears that Congress by their resolutions of the 9th ulto. have determined that they have power to judge the cause, which has already determined the essence of the dispute; for if Vermont does not belong to some one of the United States, Congress could have no such power without their consent, so that consequently determining that they have such a power, has determined that Vermont, has no right to independency; or it is utterly incompatible with the rights and prerogatives of an independent State, to be under the control or arbitrament of any other power.

Vermont have, therefore, no other alternative; they must either submit to the unwarrantable decree of Congress, or continue their appeal to Heaven Et to arms. There may

in future be a trial at Congress, which of the United States shall possess this territory, or how it shall be divided among them (but this does not concern Vermont) and it is altogether probable, that there have been proposals for dividing it between the States of N. Hampshire and New York, the same as the King of Prussia, the Empress of Russia, and the Empress of Hanover, divided Poland between those powers, with this difference only, that the former are not in possession of Vermont. The cloud that has hovered over Vermont since the ungenerous claims of New Hampshire and Massachusetts Bay, has been seen, and its motions carefully observed by this Government, who expected that Congress would have averted the Storm, but disappointed in this, and unjustly treated as the people (over whom I preside, on the most serious and candid deliberation) conceive themselves to be in this affair, yet blessed by Heaven with constancy of mind and some friends, as an honest, valiant, and brave people, are necessitated solemnly to declare to your Excellency, to Congress, and to the World, that as Life, Liberty, and the rights of this People intrusted them by God are inseparable, they do not expect to be justified in the eye of Heaven, or that posterity would call them blessed if they should tamely surrender any part. Without doubt, Congress have (previous to this) been acquainted that this State hath maintained several posts on its frontiers at its own expense, which is well known to be the only security to this quarter of the frontier inhabitants, of the State of Massachusetts Bay and New Hampshire, and it is highly probable that Albany, and such parts of the State of New York as lies to the northward of that would before this time have been ravaged by the common enemy, had it not been for the indefatigable exertions of this State, and the fears which the enemy have been, and are still possessed of, that their retreat would be intercepted by the troops from those posts, and the militia of this State. Thus by guarding the

frontiers, has this State secured the friendship of a part of the private gentlemen and yeomanry, even of those states, whose representatives it seems, are seeking its destruction; and having the general approbation of disinterested States, this People are undoubtedly in a condition to maintain government; but should they be deceived in such connections, yet as they are not included in the 13 United States, but conceive themselves to be a separate body, they would have still in their power other advantages; for they are if necessitated to it, at liberty to offer, or accept terms of cessation of hostilities with Great Britain, without the approbation of any other man, or body of men; for one proviso that neither Congress, nor the Legislature of those States which they represent, will support Vermont in her independence, but devote her to the usurped government of any other power, she has not the most distant motives to continue hostilities with Great Britain, and maintain an important frontier, for the benefit of the United States, and for no other reward than the ungrateful one, of being enslaved by them.

True, Vermont has taken an active part in the war, subsisting between the United States and Great Britain under an expectation of securing her liberty, considering the claim of G. Britain to make "laws to bind the Colonies in all cases whatsoever without their consent" to be an abridgment of the natural rights of mankind; and it appears that the said resolves of the 2nd and 9th of June, are equally arbitrary, and that they furnish equal motives to the citizens of Vermont, to resist the one as the other. For if the United States have departed from the virtuous principles, upon which they first commenced the war with Great Britain, and have assumed to themselves the power of usurping the rights of Vermont; it is time, high time for her, seriously to consider what she is fighting for, and to what purpose she has been more than five years last past, spilling the blood of her bravest sons.

This government have dealt with severity towards the Tories, confiscated some of their estates, imprisoned some, banished some, and hang'd some, etc. and kept the remainder in as good subjection as any State belonging to the union. And they have likewise granted unto worthy Whigs in the neighboring States, some part of their unappropriated lands, the inconsiderable avails of which, have been faithfully appropriated for the defence of the Northern Frontiers, which eventually terminates in the support of the interest, and securing the independence and sovereignty of the United States; and after having faithfully executed all this have the mortification, to meet with the resentment of Congress circulated in hand bills, and in the N. York public papers, representing their conduct "in contravening the good intentions of Congress, as being highly unwarrantable, and subversive of the peace and welfare of the United States." Those resolves serve only to raise the aspiring hopes and expectations, and to revive a languishing flame, of a few tories and schismatics in this State, who have never been instrumental in promoting the common cause of America.

With regard to the State of Massachusetts Bay, they have not as a legislative body, laid any claim to the territory of Vermont, nor have they enacted laws, judicially authorizing Congress to take cognizance thereof, agreeable to the aforementioned resolves; a majority of their legislative body, considering such pretensions to be an infringement on the rights of Vermont and, therefore, the State of Massachusetts Bay, cannot be considered as a party in this controversy; and as to the State of New Hampshire, although they have judicially authorized Congress to make a final adjudication of their late started, and very extraordinary claim to the territory of Vermont, yet by recurring back to original proceedings between the two States, it appears that the general Court of New Hampshire had, previous to laying their said claim, settled their boundary

line with the State of Vermont, and established Connecticut River for the boundary between the respective governments, and so far as the approbation of the government of New Hampshire can go, have previously conceded to the independence of Vermont; the particulars of which are too prolix to be given in this letter, but are exhibited at large in a pamphlet entitled 'A concise reputation of the claims of New Hampshire and Massachusetts Bay to the territory of Vermont' etc. which is herewith transmitted, as a bar against the right of New Hampshire to a trial for any part of Vermont. The government of New Hampshire, ever since the royal adjudication of the boundary line between them and the government of New York in 1764, have cast the inhabitants of the contested territory, out of their protection, and abandoned them to the tyranny of New York, and have very lately over the head of the settlement aforesaid, laid claim to the said territory, and enacted laws as aforesaid, to enable Congress to judicially determine the merit of said claim.

How glaringly illegal, absurd and inconsistent, must their conduct, as a legislative body, appear in this respect? Such irregularities among individuals, arise from the ill government of the human passions, but when it takes place in public bodies it is unpardonable, as its influence is more extensive and injurious to society. Hence it appears that (legally speaking) neither of the States of New Hampshire or Massachusetts Bay, can be with propriety considered as parties in the controversy; and consequently, New York alone is left a competitor with Vermont, even admitting that Congress are possessed of sufficient authority to determine those disputes, agreeable to their resolutions, which by this Government is by no means admissable.

Notwithstanding the usurpation and injustice of neighboring governments towards Vermont, and the late resolutions of Congress, this government from a principle of virtue, and close attachment to the cause of liberty, as well as a

thorough examination of their own policy, are induced once more to offer Union with the United States of America, of which Congress are the legal Representative body. Should this be denied, this State will propose the same to the Legislatures of the United States separately, and take such other measures as self preservation may justify.

In behalf of the Council, I am, Sir, your Excellency's most obed't Humbl. Servant.

THOS. CHITTENDEN.

To his Excellency Samuel Huntington, Esqr. President of Congress."

This subject was considered in the Senate, and on the 21st of February, the following concurrent resolutions were adopted:

Resolved, (If the Honorable the House of Assembly concur herein) That the determination of the various tribunals to which the title of the people residing in that part of this State, commonly called the New Hampshire grants, to a claim of jurisdiction, has been submitted; and the repeated acknowledgments of the said inhabitants that it existed in the late colony of New York; and since the happy Revolution in the State of New York, leaves no room to doubt the right of this government to the jurisdiction and sovereignty over the country in question.

That a letter signed Thomas Chittenden, dated the 22d November, 1780, and directed to his Excellency Governor Clinton, is couched in such exceptionable terms, as would justify the government of this State, to treat the requisition therein made, with the same silent disregard which the consciousness of the justice of its cause, has induced it hitherto to manifest for those bold and groundless assertions, which have been made by the people in question, the basis of their claim.

That this Senate doth conceive this government would be guiltless of all the calamities which would follow, should they have recourse to coercive measures, to compel the people in question, to a due obedience to the laws of this State; but as the happiness of the people, as well in one part of

the State as in another, has invariably been the sole object of this government, and to promote this, they wished to render the inhabitants of the district in question, participants in the blessings of our free Constitution, and still wish it for their sakes only, and not from a desire to rule over an extensive territory; yet as many of them so earnestly wish a separation from a government which has only been known to them by acts of kindness and beneficence; and unwilling to afford the common enemy occasion to exult in, and entertain hopes from an internal discord and contention; and to exhibit to the United States, and to the whole world, a striking example of moderation and generosity, in a government which would rather relinquish a jurisdiction to a territory so indubitably within the limits of the State, as not to admit the shadow of a doubt; than be diverted from the general interest of America, to what might be deemed particularly her own. Therefore

Resolved, (In case of the like concurrence) That the people residing in that part of the State commonly called the New Hampshire Grants, be informed, that whenever they shall appoint persons, clearly to define the limits of the country over which they request this State to relinquish jurisdiction, and to authorize and empower such persons to accede to such stipulations as may be agreed upon; that their proposals will be received, considered and decided upon.

Resolved (In case of the like concurrence) That a bill be brought in to appoint commissioners, with full powers to adjust and settle the terms on which this State will make cession of jurisdiction; and that a joint committee of the Senate and Assembly be appointed, to prepare a draft of instructions for such Commissioners.

Resolved, (In case of the like concurrence) That certified copies of the above resolution, be transmitted to Thomas Chittenden, Esq. accompanied with a request, that the same be made public throughout the district of country commonly called the New Hampshire Grants."

Upon the adoption of these resolutions by the Senate, the Governor sent the following communication to the Assembly:

"GENTLEMEN.—Although I have not been served with a

copy of the journals of either house, and therefore have no official notice of your proceedings, yet I have been informed in a manner which claims my credit, that certain resolutions have originated in the Senate, and been sent to the Assembly for concurrence, proposing a relinquishment of jurisdiction to that part of the State, commonly distinguished by the name of the New Hampshire grants.

These resolutions, as they have been represented to me, are in direct opposition to the uniform sentiments of the representatives of the people upon every former occasion; and the Assembly particularly declared, that 'they conceived they spake the general sense of their constituents, and that they were determined at every hazard, to maintain the rightful jurisdiction of the State.'

The controversy with respect to the claim of the State to that territory, has been solemnly submitted to the determination of Congress, the proper tribunal; considerable sums have been expended in collecting evidence, and a hearing has been had before Congress, who have not as yet decided, neither have they declined a decision. Should you, therefore, agree to carry into effect these resolutions, the duties of my office will oblige me to exercise the authority vested in me by the Constitution, and prorogue you, and by that means prevent you from pursuing measures, which, from the repeated declarations of former legislatures, I am warranted to believe, would not only be ruinous to this State, but also destructive to the general peace and interest of the whole confederacy.

I conceive it my duty to apprize you of my intentions, lest any disagreeable consequences which may result from this necessary exertion of power, before adequate provision is made for the safety and defence of the State, should be imputed to me.

GEO. CLINTON."

Albany, 27th February, 1781.

The Assembly did not concur in the Senate resolutions.

This subject was included in papers submitted to the Legislature by the Governor on the 16th of June, and received further consideration by the Legislature. Concurrent resolutions were adopted by the Senate and Assembly on the 30th of June, and 1st of July, respectively, with a long preamble, which among other things recited the controversy, the submission of the question to Congress, the action of Congress thereon, and the preamble then declares that "notwithstanding the censure and prohibition of Congress as aforesaid, and in contempt of their recommendations and authority, the people inhabiting the district of the said territory, have by an act of their usurped government, of the 14th day of February last, extended their claim of usurped jurisdiction by laying claim thereby, to all the lands situated to the north of the north line of the State of Massachusetts, and extending the same to Hudson's river; then east to the deepest channel of said river, to the head thereof; from thence east of North line, being extended to latitude 45 and south of the same line, including all the lands and waters to the place where the said pretended State, assumes to exercise jurisdiction, and containing a clause not to exercise jurisdiction for the time being."

The resolutions then requested the delegates in Congress to use their utmost endeavors to procure a settlement of the controversy by Congress without delay, including action by Congress "to cause the people inhabiting the said territory to desist from every attempt to carry into execution the said act of their pretended government, extending their usurped jurisdiction aforesaid; and from exercising any authority over any inhabitants, who on the said 24th day of September, 1779, claimed to be subjects of this State; and that Congress do place this State in the same condition, in every respect, as to jurisdiction, in which it was on the said 24th day of September, 1779."

GEORGE CLINTON, Governor.

FIRST MEETING.

The Governor issued a proclamation September 6, convening the Legislature at Poughkeepsie, on the 1st day of October, 1781, but a quorum did not appear in both Houses until the 24th, when the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—The electing of delegates and a council of appointment for the ensuing year,[1] rendered the meeting of the legislature at this time, indispensable: by the confederation, a new congress is to convene on the first Monday in November in every year. You will therefore perceive the necessity of proceeding to the choice of members of this state, so early as that the persons elected may have it in their power to attend in season, and prevent the inconveniences which might result from the want of a representation in Congress.[2]

The papers which I have now the honor to lay before you relate to a variety of matters of the greatest moment. It is submitted to you to determine which of them require your immediate attention, and which may with safety and propriety, be deferred until the events of the campaign shall have fully unfolded themselves, and the legislature be thereby enabled to form a more competent judgment of the measures necessary to be adopted. I cannot, however, omit recommending to your particular consideration, the letters from the superintendent of finance, and the demands on this state for supposed deficiencies in the sums and specific supplies required of us by Congress. Your deliberations on this subject will naturally lead to the

1 October 25th, the Assembly elected a Council of Appointment.

2 October 26th, the Legislature on joint ballot elected delegates to Congress.

necessity and importance of a settlement of our public accounts, and a further and more effectual provision for the collection of the arrears of taxes heretofore directed to be levied; and as the fluctuating state of our paper currency has hitherto conspired with the wishes of the disaffected by making it their interest to delay the payment of their proportions, I submit to you the propriety of adopting measures to compel the payment of the deficiencies in money, at least equal in value to those taxes at the time they severally ought to have been paid. This appears to me to be dictated by policy, and warranted by justice, otherwise the burthen of the war, which ought to be equally borne, will principally fall upon the most zealous friends to their country.[3]

I am happy in being able to inform you that through the smiles of Heaven on the spirit and activity of the troops stationed on the frontiers, those settlements, considering their great extent, and the mode of warfare pursued by the enemy, have sustained less injury this season than we had reason to apprehend; and although we have recent intelligence which indicates an invasion of the northern parts of the state, yet I trust that the formidable detachments of regular troops and levies lately sent thither, will with the aid of the militia prove sufficient to frustrate the designs of the enemy, and protect the country against their ravages. It is my duty at the same time to remind you that as the term for which the levies for the immediate defence of the state were raised, will soon expire, it will be requisite to make seasonable provision for its future defence, and for this purpose to suggest to you the expediency of revising

[3] The financial legislation enacted at this session included the following: Chap. 3, November 13, 1781, to enable the treasurer of this State to exchange the old Continental money for the new in the loan office of this State; chap. 10, November 20, 1781, levying a tax within the State; chap. 11, November 20, 1781, requiring the county treasurers to make return of the state of the taxes: chap. 37, April 12, 1782, raising the sum of thirty-six thousand pounds by tax, and for settling public accounts.

the law for raising troops on bounties of unappropriated lands, as I am encouraged by the officers engaged in these corps to believe, if a further time was allowed to complete them, and a small additional pecuniary bounty granted, a number of valuable recruits could be procured from the present levies.[4]

GENTLEMEN.—The generous conduct of our illustrious ally in sending to our assistance at this interesting period such powerful armaments as to give us a decided superiority over the common enemy, as well by sea as land, and enable us to commence operations against them of the most important nature with flattering prospects of success, cannot fail affording the highest satisfaction to every true American, and demands our warmest gratitude. Every consideration of interest and of duty, loudly calls upon these states for correspondent exertions, that by the blessing of divine Providence upon our united efforts, we may bring the war to a speedy and honorable conclusion, and secure the inestimable objects for which we are contending.

GEO. CLINTON.

Poughkeepsie, October 23, 1781.

The dispute concerning the New Hampshire grants was one of the subjects included in the papers accompanying this speech.[5]

SPECIAL MESSAGES.

October 25. To the Assembly:

"GENTLEMEN.—The design of this message, is to point out the necessity of making provision, as far as the circumstances of the State will admit, for payment of the troops of the State, in the service of the United States,[6] and for a supply of ammunition for the use of the militia.

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[4] The defence of the frontiers was provided for by chap. 8, passed November 17, 1781, and chap. 22, passed March 23, 1782. The latter act also made provision for further bounties of unappropriated lands.

[5] See *post*, p. 174, for resolutions relative to the New Hampshire grants.

[6] The Legislature responded in part to this suggestion, relative to the

A small sum was paid to the troops at the Head of Elk, on their route to Virginia—there are however arrears still due to them for more than a year; and I am warranted to assure you, that had it not been for this payment, and the spirit which usually animates an army, engaged in offensive operations with prospects of success, there was reason to apprehend the most disagreeable consequences. If my information is just, and I have no reason to doubt it, the regiments of this State have suffered much during the campaign, as well before as on their march, by the desertion of many of our best soldiers, inured to service and engaged for the war; and this defection has arisen chiefly, if not wholly, from a want of pay.

The magazine of the State, as to powder, is exhausted, and the means of acquiring that article is so difficult, as to prevent individuals from supplying themselves agreeable to the directions of the militia law. In this situation should the State be invaded in a quarter distant from the Continental stores, where we have most reason to apprehend it, we would be deprived in a great measure, of the aid of the militia.

It is your Province, Gentlemen, to decide on the ability of the State, to furnish these essential means of carrying on the war. Altho' I omitted mentioning these matters in my public speech, at the opening of the session, as they appeared to me subjects proper only for a confidential communication, you will readily perceive that they are of the first importance, and claim an early attention.

GEO. CLINTON."

Poughkeepsie, October 24, 1781.

October 27. Thanking the Senate and Assembly for their addresses.

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payment of troops, by enacting chap. 41, passed April 13, 1782, "for the further settlement of the accounts of the troops of this State, in the service of the United States."

October 29. To the Legislature:

"GENTLEMEN.—It gives me the most sensible pleasure to be able, from undoubted authority, to inform you of the surrender of the British army under Lord Cornwallis, at Yorktown in Virginia, on the 19th instant, to the allied army, commanded by His Excellency General Washington.

This signal manifestation of the smiles of Divine Providence on the justice of our cause, calls for our most devout acknowledgments; and while it reflects the highest lustre on the combined arms, affords us, the well grounded prospects of consequences the most interesting and agreeable.

GEO. CLINTON."

Poughkeepsie, October 29th, 1781.

November 1. To the Assembly:

"GENTLEMEN.—You will receive with this message, the returns of specific supplies furnished by the Agent of this State, pursuant to the different requisitions of Congress, with his letter, accompanying the same, suggesting several matters which have occurred to his observation in the execution of his office, and which appear to me to merit your attention.[7]

An act of Congress of the 20th September last, recommending to the States, of which the Judge Advocate and his Assistants are respectively inhabitants, to settle with them for the depreciation of their pay, on the principles adopted in settlements with the officers of their respective State lines, is also herewith submitted to the consideration of the Legislature.[8]

GEO. CLINTON."

Poughkeepsie, 31st October, 1781.

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[7] The State agent received further instructions by chap. 16, passed November 22, 1781, and also by chap. 40, April 13, 1782.

[8] This subject was included in chap. 19, passed March 20, 1782, for the further direction of the auditors appointed to liquidate and settle the accounts of the troops of this State, and which specifically authorized the settlement of the claims of John Lawrence, Judge Advocate of the Army of the United States, and John Strang, one of his deputies.

November 3. To the Legislature:

"GENTLEMEN.—I now transmit you for the consideration of the Legislature, a letter from Brigadier General Stark, at Saratoga, of the 26th ultimo, and another from Major General Lord Stirling, of the 29th ultimo, together with the papers therein referred to, containing intelligence of the enemy in that quarter, pointing out the necessity of establishing a post at that place, and providing the necessary supplies for a winter garrison; and requesting the assistance of the State for these purposes.

I also take this opportunity of laying before the Legislature, a letter from Lieutenant Colonel Lewis Morris, Aid de Camp to Major General Greene, relative to the depreciation in his pay; and a letter from Captain Jacob J. Lansing, appointed to muster the recruits on bounties of unappropriated lands, with his account for his services in that Station; and for the liquidation and payment whereof, no provision is made.

GEO. CLINTON."

Poughkeepsie, November 3d, 1781.

November 5. To the Senate:

"GENTLEMEN.—As some of the papers which accompanied my message of the 31st ultimo, respect the forage consumed by the allied army in Westchester County, I conceive it my duty, in addition to them, to lay before you a letter from Colonel Pickering, Quarter Master General, of the 26th of August last, with the papers therein referred to, on the same subject. [See note 7.]

GEO. CLINTON."

Poughkeepsie, November 5th, 1781.

November 9. To the Assembly:

"GENTLEMEN.—You will receive with this message, a letter from the Superintendent of Finance, of the 19th

ult. The subject to which it relates, is so essential to the interest and safety of these States, and the necessity of a compliance with the measures pointed out so clearly evinced, as to render it unnecessary for me, to recommend it to your early and serious consideration.[9] [See note 3.]

I have also the Honor to lay before the Legislature, a proclamation of the United States in Congress assembled, of the 26th ult. recommending to the several States, that the 13th of December next, be set apart as a day of Thanksgiving and prayer.[10]

GEO. CLINTON."

Poughkeepsie, November 9th, 1781.

The following is the letter from Robert Morris referred to in the Governor's message:

OFFICE OF FINANCE, *Oct. 19th,* 1781.

SIR.—I am now to address you, on a subject of very great importance. I am to detail some facts which will demand the most serious attention, from every Legislature, and from every public officer in the United States. It is my determination to administer the affairs intrusted to my care, according to plans which are founded in sincerity and truth. Convinced of the folly of our enemy in supposing that any considerable body of men in the United States are opposed to the Revolution, I am persuaded that in order to remove the greater part of our difficulties, the first proper step is to state them fully to the people, thro their representatives. It shall, therefore, be a part of my study to prepare every transaction for the public eye, so

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[9] See *post*, p. 180, for resolutions setting forth New York's financial condition.

[10] The Legislature passed a concurrent resolution requesting the Governor to issue a proclamation in accordance with the recommendation of Congress, designating the 13th of December, as a "day of Thanksgiving and prayer throughout this State; and earnestly recommending to all the citizens and inhabitants of this State, to cease from all servile labor and employment on the said day, and to observe the same with becoming solemnity."

that the meanest individual may be, in due time informed of those affairs in which, as a free citizen, he is interested. The various reports which have been circulated, the publications in the several Gazettes, and even letters from some who ought to have known better, all these things have conspired to infuse an opinion that every power in Europe is favorable to us, that great sums of money are already advanced to us, and that still greater may be obtained. Whatever may be the faith of my administration, I will never be subjected to the reproach of falsehood or insincerity. I, therefore, take the earliest moment, in which I am permitted, to make those communications which will give an insight into our real situation.

With respect to the situation and politics in Europe, it is not my business to detail them, neither am I in capacity to do it with certainty. But this at least is certain, that the disposition of the European powers, however friendly, has been too much relied on. As a proof, I need only observe that not a single State has acknowledged our Independence, except France, altho our alliance with that respectable monarchy has now subsisted near four years. Yet that monarchy is certainly the first in the world. It is in the closest connection with Spain. Spain has long been engaged in the war, and still longer solicited to form an union on the basis of the Treaty with France. The armed neutrality, which gave such splendid hopes to many, has not yet produced the benefits expected. I will not proceed on the ground of conjecture, nor is it necessary for me to dwell longer on our political State with respect to foreign powers. But as there is little reason to expect, so I hope there is no American who would wish, an alliance with any Empire on earth until they shall be so sensible of our importance as to treat on principles of equality.

The public opinion as to the conduct of other Princes and States has greatly injured us, by relaxing our exertions. But the opinion as to pecuniary aid has been still more pernicious.

People have flattered themselves with a visionary idea that nothing more was necessary than for Congress to send a Minister abroad, and that immediately he would obtain as much money as he chose to ask for; that when he opened a loan, hundreds would run to see who should have the Honor of subscribing to it and the like. But surely a moment's reflection should have convinced every reasonable man, that without the clear prospect of repayment, people will not part with their property. Have the efforts to borrow in this country been so successful as to ground any hope from abroad? Or is it to be supposed, that Foreigners will interest themselves more in our prosperity or safety than our own citizens? Or can it be believed that credit shall be given abroad, before solid funds are provided at Home? Or could it be imagined, that the disorder necessarily incident to a great Revolution, would be considered as a better source of trust and confidence, than the regularity and consistency of ancient establishments?

The Congress, conformably to the public wish, have appointed Ministers, requested grants, and opened loans. In Holland they have got nothing. And in Spain but very little. Loans were expected from individuals in Holland, but nothing of that sort has been or probably will be obtained. Loans were not expected in Spain, unless from the King, and from him they have been solicited with but little success.

The distressed situation of public affairs forced the Congress to draw bills of exchange on their ministers. Some were drawn on France, some on Spain and some on Holland. The first were honored and paid, the others were accepted, but recourse was finally had to the Court of France for the payment of those also. They were drawn at long sight, the sales were slow, they were remitted from time to time, and every opportunity afforded the ministers of the United States to obtain the monies for discharging them, but in vain. Of consequence these bills

have been regularly referred to the Court of France for payment. And this has done us injury, by anticipating the aid which France has been disposed to afford us, and at the same time has justly alarmed and greatly embarrassed the French Ministry.

These things it appears necessary that you should know, and your Legislature will undoubtedly draw the proper inferences. They will see how much has been suffered by delaying the call for the resources of our own Country, and relying on the empty bubbles of hope, instead of the solid foundations of revenue. They will I trust clearly see, that all our hopes and expectations are narrowed down to what France may give or lend. But here as in other cases, delusion takes place of reality; we flatter ourselves with ideal prospects, and are only convinced of our folly by the fatal crisis of national distress. In order that you may clearly understand the succor afforded by France I enclose an account, extracted from a statement lately furnished to Congress by the Minister Plenipotentiary of his most Christian Majesty.

You will observe that his Majesty has granted to the United States as a subsidy, for the current year, of six million livres. And on a representation of our distresses, he was pleased to become security for a loan to be opened on our account in Holland. And when it appeared that there was little probability of obtaining any money there, in season, he further agreed that the sum to be borrowed should be advanced for us, in the first instance, from the Royal Treasury. Thus the gift and the loan together amount to sixteen million livres, which would, if in this country, be equal only to two million, nine hundred and sixty-two thousand nine hundred and sixty-two dollars; altho at the rate of estimating dollars in France, it is there equal to three million and forty-seven thousand six hundred and nineteen dollars. But at the highest rate of exchange which has hitherto taken place, this sum, if drawn

for, would have amounted to no more than two million five hundred and sixty thousand dollars.

I have been thus particular with respect to this sum, because the difference of currencies very often tends to deceive those to whom their real value is not a familiar subject of attention.

The enclosed account is in livres, and the two first articles contain the total of the grant and loan amounting to sixteen million livres. The remainder contains the deduction to be made. The two first articles whereof, amounting to two million three hundred thousand livres, is for the payment of bills drawn on France, Spain and Holland, which I have already mentioned; the produce of the sales whereof has been applied to the public service long before my appointment. The next article, being two million of livres, is appropriated to the payment of interest bills, wherefore no part of it can be applied to other purposes. The fourth article I need say nothing of here, as it has long been in the mouths of everybody. The fifth and sixth articles, are for those stores which were laden on board four transports by order of Colo. Laurence [Laurens] three of which have safely arrived, and the other put back in distress. The seventh article is in consequence of the loss of that valuable ship, the Marquis de la Fayette, which contained a great number of public stores, the replacing of which is necessary for the army and its operations, and which will amount to that sum.

The last article contains the amount of monies deposited to answer my drafts, which have been made from time to time, and the produce appropriated to the service of the current year. On the whole there remains a balance of three million and sixteen thousand four hundred and ninety nine livres. This with the sum brought by Colo. Laurence, may be considered as of the value of about one million dollars, which is the utmost, for it would exceed

that only by twenty-one thousand five hundred and seventy-four dollars, if it were now in this country.

Thus then you see the extent of that pecuniary succor, which has filled the minds of all with such teeming expectation, is narrowed down to one million of dollars. But by the best accounts and estimates I have been able to procure, this war had hitherto cost about twenty millions annually. I do indeed expect that the future expenditures will be greatly curtailed, but it must be remembered that the most rigid economy has its bounds, and that it cannot exist without the punctual performance of those engagements on which the first step toward it must depend. As soon as the proper estimates for the next year can be made out, the demands founded on them will be stated, and I shall shortly advertise for contracts as the most effectual mode of husbanding our resources. I feel it my duty, however, to observe, that a note this day sent to Congress of some of my principal engagements, for money, amounts to upwards of two hundred thousand dollars. Yet the calls for it from every quarter are incessant.

I would gladly quit the subject of foreign supplies and expectation here, but it is necessary that the States should know all, and I should not answer the views of Congress if I did not add, that the Court of France place the aid now afforded us, among the number of those extraordinary efforts which cannot be repeated. The declaration that no more pecuniary assistance can be afforded to us, is as plain as language will admit of; and altho applications may and probably will be made by our ministers to the Court of Versailles, yet surely no prudent man would form any reliance on such application, in the face of such a pointed and express assurance to the contrary; and especially, when to every request a short answer can be made by asking what we have done for ourselves. Sir I must speak to you most plainly. While we do nothing for ourselves, we cannot expect the assistance of others.

This is a very painful subject to dwell upon, but a consideration of very great magnitude remains behind, and sooner or later it must come forward. Prudence therefore bids us to examine it now, and provide for it in season. The neglect in funding the public debt has introduced a practise of issuing loan office certificates, for the interest due on other loan office certificates. This I have absolutely forbidden, nor will I ever consent to it. Such accumulation of debt, while it distresses the public, and destroys its credit, by no means relieves the unfortunate individual who is a public creditor; for if revenue is not provided, increasing the certificates would only lessen their value. This would be such a fraud as would stamp our national character with indelible marks of infamy, and render us the reproach and contempt of all mankind. It is high time to relieve ourselves from the ignominy we have already sustained and to rescue and restore the national credit. This can only be done by solid revenue. Disdaining therefore those little timid artifices which while they postpone the moment of difficulty, only increase the danger and confirm ruins I prefer the open declaration to all of what is to be expected, and whence it is to be drawn. To the public creditors therefore I say, that until the States provide revenue for liquidating the principal and interest of the public debt, they cannot be paid. And to the States I say, that they are bound by every principle which is held sacred among men, to make that provision.

I have gone thro the task which I proposed to myself in writing your Excellency this letter, which I pray you to communicate to the Legislature of your State. I hope the Congress will soon be enabled to transmit their requisitions, and I shall endeavor that they be as moderate as possible. But I must pray that every man, whether in public or private life, will seriously consider the importance of complying with those requisitions. It is not by the brilliant successes of war, the splendor of conquest, or the

shouts of victory, that a wise ministry are to be affected. The superiority of national resources is the sure ground on which to hope for success, and that superior resource steadily and perseveringly applied, must eventually attain its objects. It is for these reasons that the enemy have hoped everything from the derangement of our finances, and on the other hand, as I am well informed, it is from the establishment of a national Bank, and the forming of contracts to supply our armies, that they have the greatest apprehensions. By the bounty of the Almighty we are placed in a situation where our future fate depends on our present conduct. We may be happy or miserable as we please. If we do our duty now, this war will soon be brought to a close. If not it may last for many years, and what will then be its termination it is not in human wisdom to foresee. Thoroughly convinced that the enemy must ask peace, whenever we are in a condition vigorously to prosecute the war; and that we shall be in that condition whenever our affairs are reduced to order, and our credit restored; and that for these purposes, nothing more is necessary than a proper system of taxation; I cannot avoid expressing my sentiments on the subject in all the warmth with which they flow from my heart. I hope and pray that the facts I have stated may meet with that calm attention which is due to their importance, and that such measures may be taken, as shall redound to the Honor and interest of our country. With all possible respect, I have the honor to be, Sir, Your Excellency's most obt. and humble Sert.

ROBT. MORRIS.

The following is the statement referred to in the foregoing letter:

Subsidy granted by the King to the United States	6,000,000	
Loan opened in Holland to be advanced from the Royal Treasury	10,000,000	
		16,000,000

To Doctor Franklin for answering bills drawn by Congress.....		800,000	
To Colo. Lawrence [Laurens] to be sent out to America by the way of Holland but stopped by Doctor Franklin to answer bills drawn by Congress & presented to him for paymt.....		1,500,000	
To so much appropriated for payment of the bills to be drawn by the Congress during the year 1781 note this is for the interest bills which are now negotiating		2,000,000	
To Colo. Lawrence (Laurens) which he brought out with him in specie	2,500,000		
To same by sundry articles of clothing, arms and ammunition furnished by the departments of war and Marine which he brought and sent out.	2,289,109		
To amount of articles remaining to be supplied on his requisition.	397,000		
		5,186,109	
To so much reserved for furnishing Articles equivalent to those taken on board the Ship Marquis de la Fayette		2,297,392	
To so much deposited at the request of the Chevalier de la Luzerne to answer the drafts of the American Minister of Finances. Note this sum has been already applied for the current service of the campaign.....		1,200,000	12,983,501
			3,016,499

November 14. To the Senate:

"GENTLEMEN.—It is a duty I owe to the public, as well to my family, to lay before the Legislature the account which you will receive with this message, of several sums in specie, advanced to the officers and privates of the State, who have been prisoners with the enemy. I would only observe, that for such part as was not immediately advanced by myself, I stand chargeable with interest.[11]

GEO. CLINTON."

Poughkeepsie, November 13th, 1781.

November 14. To the Assembly:

"GENTLEMEN.—I have now to submit to your consideration a letter of the 13th instant, from Major General Heath, representing the distresses of the troops under his command, particularly for want of bread, and his apprehensions, unless they are furnished with an immediate supply. Every measure in my power, has been essayed to cause the full quota of specific supplies allotted to this State, to be collected; but you will find from the returns of the State Agent, that there are still deficiencies, and he informs me, that there are obstacles, which prevent the completion of this business, that can only be removed by the interposition of the Legislature.[12]

GEO. CLINTON."

Poughkeepsie, November 13th, 1781.

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[11] The act, chap. 17, passed November 22, 1781, pledged the faith and credit of the State for the repayment of the expenses incurred by the Governor, and authorized the treasurer to pay the Governor two hundred seventy-two pounds, five shillings and three pence with interest from January 1, 1778.

[12] A concurrent resolution was adopted authorizing the State Agent to sell wheat for the purpose of supplying the army with flour, and promising indemnity for such sale.

November 22. To the Senate: Transmitting a letter from Robert R. Livingston "on the subject of making returns of the damage done by the enemy within this State by wanton destruction of property.[13]

November 22. To the Assembly:

"GENTLEMEN.—It is with great regret I find myself constrained to address you at this time, when I have reason to believe you are about preparing to adjourn; and more especially, as it is on a subject, which in the present situation of the State, I am sensible must be attended with embarrassment. It is my duty however, (and this I trust, will be a sufficient apology) to remind you of the necessity of, at least, making such provision for the incidental expenses of government, as to enable the carrying into execution, the several measures adopted for the immediate defence and safety of the State. While it was in my power, I have cheerfully advanced of my own private property for these services, at a very considerable loss, as will appear by an inspection of the accounts from time to time rendered to, and approved by the Legislature; but my present situation is such, as not to admit farther disbursements; and therefore, unless means can be devised for defraying these contingencies it will be out of my power to cause the laws of this State, to be executed; and I trust, after this notice, I shall not be held answerable for the consequences.[14]

GEO. CLINTON."

Poughkeepsie, 22d November, 1781.

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[13] A concurrent resolution was adopted authorizing the chief justice and associate justices of the Supreme Court to collect returns and evidence on the subject mentioned in this letter.

[14] Chap. 17, passed November 22, 1781, provided for contingent expenses.

November 23. The Legislature adjourned to meet at Poughkeepsie the third Wednesday (15th) of May, 1782.

SECOND MEETING.

Governor Clinton issued a proclamation on the 20th of January, 1782, convening the Legislature at Poughkeepsie on the 11th of February. A quorum did not appear in both Houses until the 23d, at which time the Legislature received the following message from the Governor:

"GENTLEMEN.—The very important and indispensable business arising from the papers which I have the honor to lay before you with this message, will, I flatter myself, evince the necessity of convening you on an earlier day than that to which you were adjourned.

The different acts containing requisitions of aids in men[15] and money, the address of Congress, and the letters from the Commander-in-Chief and the Superintendent of Finance, which accompany them, as they merit, so am persuaded, they will engage your early and serious consideration.

I cannot forbear recommending to your particular attention, the affidavits and other papers, which prove a treasonable and dangerous intercourse and connection, between the leaders of the revolt in the North eastern part of the State, and the common enemy. In order that you may form a competent judgment of this matter, such of the original papers respecting it as are in my possession, will be delivered to you. Your own prudence will, however, suggest that these communications, as far as they relate to the names of persons from whom the intelligence is derived, ought not to be divulged. I have only to observe, that those

[15] Chap. 22, passed March 23, 1782, provided for raising troops to complete the line of this State in the service of the United States.

proofs are corroborated by a variety of circumstances, which equally tend to show that these criminal transactions are not confined to individuals, but have been conducted under the countenance and sanction of that usurped government.[16]

GEO. CLINTON."

Poughkeepsie, February 21st, 1782.

The papers accompanying the message, which in each House were referred to various committees, included, in addition to those specifically mentioned in the message, several acts of congress and papers relative to the American Bank,[17] an act of Congress of the 2d of January, 1782, relative to British goods found on land,[18] an act of Congress of the 25th of January, recommending the establishment of a speedy mode of administering justice between subjects of his most Christian Majesty, and citizens of the United States, and for vesting persons in the neighborhood of the sea coast with power to secure shipwrecked property, and an act of Congress of the 11th of December, 1781, recommending that the Legislatures of the several States take a census of white inhabitants therein pursuant to the 9th article of Confederation.[19]

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[16] The Assembly passed resolutions on the 2d of March, 1782, protesting against the action taken by the people of Vermont in establishing an independent government, but the Senate did not concur. Two acts were passed on this subject, namely, chap. 43, April 14, 1782, pardoning all offences committed against this State by residents of the disputed territory, and chap. 44, April 14, 1782, "for quieting the minds of the inhabitants in the northeastern parts of this State." The act confirmed grants of land within the territory affected, but such confirmation was not to take effect until the residents of that territory had renounced their assumed independent government.

[17] Chap. 35, passed April 11, 1782, incorporated the Bank of North America and prohibited the establishment of any other bank within this State.

[18] The subject mentioned in this act of Congress was included in chap. 39, passed April 13, 1782, to prevent illicit trade with the enemy.

[19] A census of white inhabitants of the State was provided for by chap. 18, passed March 20, 1782.

SPECIAL MESSAGES.

February 25. To the Assembly:

"GENTLEMEN.—By this message I submit to your consideration, a letter of the 14th instant, from William Duer, Esq. and Co., contractors for supplying the troops at the posts in this State, north of Poughkeepsie, expressing their willingness to contract for the wheat which shall be collected by tax, in pursuance of the act passed for that purpose at your last meeting.

GEO. CLINTON."

Poughkeepsie, February 25th, 1782.

March 2. To the Senate:

"GENTLEMEN.—I herewith submit to your consideration several acts of Congress, transmitted to me by the Secretary of Foreign Affairs, together with his letter of the 18th February, enclosing the same.

You will also receive with this message, a letter from Major General McDougal, of the 27th ultimo, pointing out the necessity of certain legislative provision, for the better security of the posts at West Point.

GEO. CLINTON."

Poughkeepsie, March 2, 1782.

March 11. To the Assembly:

"GENTLEMEN.—With this message you will receive a letter from the Secretary of Foreign Affairs, of the 28th ult. stating the situation of our public affairs; and the necessity of a compliance with the several requisitions of Congress, for supplies. Also a letter from Udny Hay, Esq. State Agent, requesting that provision be made for defraying such proportion of the contingent expenses, as may accrue on the part of this State, in ascertaining the quan-

tity of forage consumed by the allied army in Westchester County, last campaign.[20]

GEO. CLINTON."

Poughkeepsie, March 11, 1782.

March 20. To the Senate:

"GENTLEMEN.—I refer to your consideration, petitions of several of the subjects of this State, who have been seduced from their allegiance by the leaders of the revolt in the northeastern part of the State, expressing their penitence, and desire of returning to their duty; and supplicating pardon for their offences. [See note 16.]

GEO. CLINTON."

Poughkeepsie, March 20th, 1782.

March 21. To the Senate:

"GENTLEMEN.—I now lay before you dispatches lately received from the delegates of this State. You will observe, that the controversy respecting the district called the New Hampshire Grants, remains undecided by Congress, and that there is not any reason to expect a speedy decision.

I entertain no doubt that the traitorous and dangerous intercourse, between the leaders of the revolt in that quarter, and the common enemy, commenced as early as the year 1780; and there is reason to believe, that ever since that period, they have promoted the designs of the enemy, especially against the western frontier settlements of this State; it is therefore of the utmost importance, that the most decided measures be adopted for restoring order and good government in that district; and events which have lately happened, present a favorable opportunity, which

[20] The Legislature by concurrent resolution authorized the expenditure of one hundred pounds for the fees of witnesses and other expenses connected with the arbitration to determine the quantity and value of the forage consumed or destroyed by the combined army in the last campaign in Westchester County.

ought, in my opinion, to be immediately embraced. [See note 16.]

I also with this message, submit to your consideration, a letter from the Commander-in-Chief, of the 5th instant; and a letter from the Superintendent of Finance, of the 9th instant.[21]

GEO. CLINTON."

Poughkeepsie, March 21st, 1782.

March 22. To the Senate:

"GENTLEMEN.—I refer to your consideration, the copy of a letter I have received from Herman Hoffman, Esq. of the 19th instant, in confidence that effectual measures will be adopted by the Legislature, for the relief and indemnity of the members of the Committee of Rhinebeck Precinct, in the case therein stated, against the suits with which it appears they are threatened, in their private capacities, for services performed at their request, in the common defence.[22]

GEO. CLINTON."

Poughkeepsie, 22d March, 1782.

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[21] The Legislature considered the matter included in the letter from the Superintendent of Finance, and as a result adopted the following resolution:

"*Resolved*, That his Excellency the Governor be requested to write to the Delegates of this State, in Congress, requesting them to use their most strenuous endeavors, to prevent any act of Congress being passed, which may tend to adjust the accounts of any, or all the States, individually considered, upon one and the same scale of depreciation; and if any such act is already passed, to move for a revision, and urge the partial and pernicious consequences which will result; and to declare the determination of the Legislature, never to adjust the accounts of this State, on the principle of there having been an equal depreciation in every State."

[22] The communication from Herman Hoffman resulted in the following concurrent resolution which originated in the Senate:

"*Resolved*, as the opinion of the Legislature, that whenever the aid of the militia of any State is requested by another State, or by any individual inhabitant thereof, to defend against the Common Enemy, the State to which such militia may belong, or the United States, and not the State, or the individuals on whose request such militia may march, are responsible to them for their pay; and therefore that the claim of Captain William Burrell, against the members of the late Committee of Rhinebeck, for the pay and contingencies of himself, and the detachment of militia under his command,

March 28. To the Senate:

"GENTLEMEN.— I take the liberty of referring to your consideration, two petitions of the 16th instant, from several of the inhabitants of Tryon County, the exposed situation of whose usual place of residence, have induced them to take refuge in the small posts erected in that county, for the common defence; their case appears to be attended with circumstances of peculiar hardship, and to merit the attention of the Legislature.[23]

GEO. CLINTON."

Poughkeepsie, March 27th, 1782.

March 29. To the Senate:

"GENTLEMEN.— I conceive it my duty to point out to your attention, the case of the officers and privates of the militia, who while engaged in the service of the country, were made prisoners by the enemy; many of whom have suffered a long and cruel captivity; in its consequences prejudicial to their healths, and ruinous to their private fortunes; and to recommend that some adequate provision be made for their pay, and a compensation for the loss of arms and accoutrements. I beg leave at the same time, to

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while serving in this State, in the year 1777, is highly unjust and improper.

Resolved, That if the said Captain William Burrell should commence a suit against the members of the said Committee, or either of them, for the recovery of the said pay and contingencies, that they contest such suit, and that this State will indemnify them.

Resolved, That his Excellency the Governor be requested to write to his Excellency the Governor of Connecticut, on the subject matter of the said claim, and signify to him the sense of this Legislature thereon, and request his interposition, to prevent the said Captain William Burrell from commencing such suit as aforesaid."

NOTE.— The Assembly resolutions use the name James Burrell.

[23] This suggestion, as to inhabitants of Tryon county, resulted in chap. 34, passed April 10, 1782, amending an act passed March 22, 1781, to accommodate the inhabitants of the frontiers with habitations and for other purposes therein mentioned. Persons who had been compelled to abandon their homes in consequence of the incursions of the enemy were granted certain privileges relative to cutting timber and fire wood and were protected against suits for trespasses.

remind the Legislature, that the levies raised for the defence of the State in the last two years, have not received any part of their pay; for, notwithstanding the engagements of Congress for their pay and subsistence, at the public expense, they have by their resolutions, recommended the advance to be made by the State in the first instance. [See note 6.]

I also take this opportunity of mentioning, that no provision is made for subsisting the present levies; and that I am without any direction on this subject.[24]

GEO. CLINTON."

Poughkeepsie, 29th March, 1782.

March 29. To the Assembly:

"GENTLEMEN.—At the instance of Major General McDougall, I now submit to your consideration his letter to me, of the 28th instant, on the subject of the depreciation of his pay with the account and papers accompanying it.

GEO. CLINTON."

Poughkeepsie, 29th March, 1782.

March 30. To the Assembly: Transmitting the report of the State Agent with a letter from him.[25]

April 3. To the Senate:

"GENTLEMEN.—You will receive with this message, a letter from the President of Congress, covering their act of the 19th ult. recommending to the several States, to make

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[24] By chap. 46, passed April 14, 1782, if Congress did not provide subsistence for the levies, the Governor was authorized to direct the County Treasurers to deliver all wheat and rye which might be collected under chap. 37, passed April 12, 1782, except amounts already otherwise appropriated, to such person or persons as he shall authorize to receive the same for the subsistence of the levies and militia.

[25] This communication resulted in chap. 40, passed April 13, 1782, "for the further direction of the State agent with respect to forage, and the collection of specific supplies."

provision for staying suits at law against public officers.[26] Also a letter from the President of Congress, with a proclamation, recommending the setting apart the last Thursday of April instant, as a day of fasting, humiliation and prayer.[27]

GEO. CLINTON."

Poughkeepsie, 3d April, 1782.

April 10. To the Assembly:

Objections by the Council of Revision to a bill "to empower justices of the peace, mayors, recorders and aldermen to try causes to the value of ten pounds and under, and to repeal sundry acts therein mentioned."[28]

"The Council object to the said bill, generally, as being in their opinion, inconsistent with the public good.

1st. Because it subjects property, of too great amount, to be determined by vague and informal courts, which experience evinces often proceed upon mistaken principles of justice, to which the injured must submit, or risk the incurring of greater expenses, by seeking redress in the Supreme Court, and where relief can only be given in peculiar cases.

2dly. Because it will tend to a spirit of litigation, and as these courts may be, and generally are held in taverns, they lead the inhabitants who attend them into dangerous excesses, introductive of a contempt of the laws, and a profligacy of manners.

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[26] The Legislature passed a bill for staying suits against public officers, but it was vetoed by the Council of Revision on the 13th of April and was not passed again.

[27] A concurrent resolution was passed, recommending that the Governor issue a proclamation designating the last Thursday (25th) in April as a day of "fasting, humiliation and prayer."

[28] This bill, relative to the trial of small causes, was passed over the veto and became a law, chap. 36, on the 11th of April, 1782.

3dly. Because a great waste of time must be occasioned by the execution of the law, where a court may be held for the trial of each cause." The Council further object to the said bill, particularly:

"1st. For that by the third section, either of the parties or their attornies, may demand a jury, altho' no issue is joined; by which means, a jury may be summoned at the request of the plaintiff, for the purpose of increasing the costs, in cases where the defendant may make no defence.

2dly. For that by the fourth section, the court is authorized and required (unless a reasonable cause be shown, or be proved to its satisfaction) to set a fine on every person who shall make default in attending as a juror or a witness, and to issue a warrant for levying the same; thus a defaulting juror or witness, is subjected to the payment of such a fine or imprisonment, without the benefit of an essoine day (by law given in all superior courts) to assign his reasons for his nonattendance by proof.

3dly. For that by the last section, an oath of allegiance and abjuration, is required to be taken as an indispensable preliminary, to entitle any of the subjects of this State, to the right of bringing suits for the recovery at law, or in equity, of their just demands. Governments from reasons of policy, may at times require from their subjects, a general test; but when this is required from those only, who are compelled to have recourse to the courts for the recovery of their just demands, under the alluring temptations of interest, it can never afford to such a government, the security originally intended thereby; and altho' the provisionary clause dispenses therewith, in favor of the inhabitants of Westchester County, and the subjects of neighboring States, it leaves the subjects of our faithful allies, and alien friends, who under the sanction of our laws or national treaties, have a temporary residence in this State, without the remedy of recovering their legal rights."

April 11. To the Assembly:

Objections by the Council of Revision to a bill "for raising the sum of eighteen thousand pounds, and a further sum of eighteen thousand pounds, by tax within this State; and for settling public accounts." [29]

"1st. The Council, sensible of the propriety of raising money for the public exigencies, regret the necessity to which they are reduced of objecting to this bill, as inconsistent with the spirit of the Constitution, and against the public good; and more especially, as the exceptionable clauses in the said bill, appear unconnected with its general design.

The Council object to the said bill:

1st. Because by the fifth and ninth sections, the Commissioner to be appointed for the purpose of adjusting and settling the public accounts of the inhabitants, is to be guided and directed by the instructions which shall be communicated by the Legislature, or by the persons named in the bill, or hereafter to be appointed. This clause gives to instructions, joint force and operation, with the law whereon they are founded, and may, in effect, direct a mode of settlement, and establish a precedent against the spirit of the Constitution; and because the auditor of this State, who is to liquidate the accounts of individuals, against the public, being also subject to such instructions, his responsibility for his conduct, is totally destroyed; and the property of the subject, left without the security of law.

2d. Because by the sixth and seventh sections, the said Commissioner after such settlement, is to receive from the claimant, all his vouchers and accounts, and to give him certificates for the amount of his demand, with interest, made payable by the treasurer of this State, thereby subjecting this State in the first instance, to the payment of the

[29] This bill, imposing a tax of £36,000 and for other purposes, was passed over the veto, and became a law, chap. 37, on the 12th of April, 1782.

public debts due to its inhabitants; and as this mode of settlement, is unauthorized by any act of Congress, the State can have no solid security for repayment, or being credited therewith in their general account.

3d. Because should the said bill become a law, such claimants are not obliged to relinquish their vouchers against the United States, and accept the security of the State; and should they prefer the former to the latter, the law will be nugatory, and a heavy expense incurred without any advantage to the public."

April 13. To the Senate:

Objections by the Council of Revision to a bill "to stay suits against public officers, for a limited time."

"The Council without seeing the necessity of a declaratory clause in the said bill, that officers and servants of this or the United States are liable to pay the debts by them contracted, on behalf of the public, convinced, should the question at any time be raised, the Courts of justice can decide it upon the law already extant, object to the enacting clause in the said bill, as being inconsistent with the public good. Because the suspension of one of the most essential rights of the subject, that of appealing to the Courts of justice for the recovery of a just demand, is an exercise of legislative power, which may be drawn into a dangerous precedent, tend to destroy the confidence of the people, and afford the subject upon the same grounds, a pretext for a denial of paying the public taxes, or debts due to each other."

The bill was not passed over the veto. (See note 26.)

April 13. To the Senate:

"GENTLEMEN.—I am informed that you have it in contemplation, to put an end to your present meeting, and are accordingly preparing to adjourn. It is not my desire to increase the inconveniences which you must experience by

so long attendance on the public service; but I am nevertheless constrained by principles of duty to our common constituents, to remind you, that the provisions for the defence of our extensive frontier settlements, depend upon contingencies altogether out of my control; and should the application to Congress for subsisting the levies for that service, prove unsuccessful, these troops cannot be brought into the field; and in this case, consequences of the most distressing and serious nature, may be apprehended.

I would further beg leave to apprise you, that little dependence ought to be placed on the militia, as a permanent defence, especially with no other means of subsistence, when called into service, than what they may provide for themselves. [See note 24.]

GEO. CLINTON."

Poughkeepsie, 13th April, 1782.

April 14. The Legislature adjourned to meet at a time and place to be designated by the Governor.

THE VERMONT CONTROVERSY.

November 19, 1781, final action was taken by the Legislature, approving the following resolutions:

"*Resolved,* That it appears from sufficient evidence, that Congress did by their act of the 24th of September, 1779, inter alia, earnestly recommend to the States of New Hampshire, Massachusetts Bay and New York, to pass laws expressly authorizing Congress to hear and determine all differences between them, relative to their respective boundaries, in the mode prescribed by the Articles of Confederation; and also by express laws for the purpose, to refer to the decision of Congress, all differences or disputes between them relative to jurisdiction, which they might respectively have with the people of the district called the New Hampshire Grants; and also to authorize Congress, to proceed to hear and determine all disputes subsisting between the Grantees of the said States, respecting titles to lands lying within the said district; and also

that Congress did thereby pledge their faith, after a full and fair hearing of all the said differences and disputes, to decide and determine the same according to equity, and carry into execution, and support their determinations and decisions in the premises.

Resolved, That it appears from the like evidence, that at the time of passing the said act, and for above a century and a half before, to wit; from the first settlement of the Colony of New York, now this State of New York, the said Colony, and this State included, by most indubitable right and title, both of jurisdiction and property, all the lands among others, to the westward thereof, lying north of the north bounds of the Massachusetts Bay, up to the latitude of 45 degrees north, and extending between those boundaries from Hudson's River to Connecticut River, including the waters of the northern lakes, and other waters within those boundaries. That the above extent of territory, which includes the district called the New Hampshire Grants, was, by a decree of the British King, to whom the sovereignty thereof, as parcel of the Colony of New York belonged, made in his Privy Council the twentieth day of July, 1764, between the Colonies of New York and New Hampshire, declared to be parcel of the said Colony of New York; that in consequence thereof, the Government of the Colony of New Hampshire, expressly ceded and relinquished all claim and title of jurisdiction to the above territory. That thereupon the same were, by acts of legislation of the Colony of New York, formed into counties; and such parts thereof as were settled, were represented in the Legislature of that Colony. That they were also represented in the Provincial Congress and Convention of this State of New York, received aids from them as parcel of this State, both before and after the declaration of the Independence of these United States; assisted by their representatives in forming the Constitution of this State, and fully submitted to the jurisdiction thereof, 'til in the year 1777.

Resolved, That it appears of record, that notwithstanding the above clear and conclusive evidence of right, on the part of this State of New York, to the territory above described, including as aforesaid, the New Hampshire Grants, and tho' the Legislature of this State, might therefore, consistently with the strictest justice, have asserted their dig-

nity and sovereignty over the district of the New Hampshire Grants; yet they respectfully adopting the sentiments of Congress, that it was essential to the interest of the whole Confederacy, carefully to avoid all intestine dissensions, and maintain domestic peace and good order, acquiesced in the submission recommended by the said act of Congress, and accordingly on the 21st day of October, 1779, passed a law of this State for that purpose.

Resolved, That it satisfactorily appears, that in consequence of the said law, the agents thereby appointed to manage the controversy, on the part of this State, at very great public expense collected the necessary evidence, to support the facts asserted in the second above mentioned resolution; and that after many and repeated delays, they were at length, on the 19th day of September, 1780, in the presence of all the parties interested, (except the State of Massachusetts Bay, who had not passed the necessary act of submission) indulged with an hearing before Congress; in the course of which, such evidence as above mentioned, was produced on the part of this State, as in the opinion of the Agents of this State, fully proved to Congress, the several facts contained in the said second above mentioned resolution; and that on the 27th day of the same month, all parties being present, (except the State of Massachusetts Bay, and Messrs. Allen and Bradley, Agents for the people of the New Hampshire Grants, claiming to be a separate independent jurisdiction, who tho' duly notified, then declined any further attendance.) The State of New Hampshire, who had also submitted by their legislative act, had an hearing in Congress, in support of their claim to the jurisdiction over the district called the New Hampshire Grants. That this State has on their part, fully complied with every requisite contained in the said act of Congress of the 24th of September, 1780, and has accordingly from that day to this, abstained from the grant of any lands within the said district; and also from the exercise of jurisdiction over any of the inhabitants of the said district who had not acknowledged the same; that on the contrary, the revolted inhabitants of the said district, having arbitrarily erected themselves into a separate and independent State, unrecognized as such until this day by this State or the other United States; and having framed a government, they have passed laws, granted lands, and exercised civil

and military authority over the persons and property of those inhabitants, who profess themselves to be subjects of this State, in manifest subversion of the right of sovereignty and property of this State, and in direct contempt and infringement of several acts of Congress. That altho' they had contented themselves with the exercise of jurisdiction, principally, up to a line running nearly parallel to Hudson's River, at twenty miles distance therefrom, until the month of June last; yet, that at that time, notwithstanding the censure and prohibition of Congress, and in contempt of their recommendation and authority, by an act of their usurped government, they extended a jurisdictional claim over all the lands situate north of the north line of the Massachusetts and extending the same to Hudson's River; then east of the Centre of the deepest channel of said river to the head thereof; from thence, east of a north line, being extended to latitude 45 deg. and south of the same line, including all the lands and waters to the place where the same pretended State then assumed to exercise jurisdiction, inserting at the same time in their said act, a clause not to exercise jurisdiction within their jurisdictional claim, for the time being.

That of all these matters, Congress have been fully apprised, and tho' repeatedly solicited thereto by the delegates of this State, have not hitherto made any decision and determination of the said controversy according to equity, as by their said act of the 24th of September, 1779, they pledged themselves, and by the law of this State they were authorized to do. That to put an end to this delay, so injurious to the jurisdiction of this State, so subversive of its interest, peace and polity, so promotive of a repetition of those violent acts of usurped, civil and military authority, which in the judgment of Congress, declared in their resolution of the 2d of October, 1780, were highly unwarrantable and subversive of the peace and welfare of the United States; and from which they required the people inhabiting the said grants, to desist until the decision and determination of Congress in the premises, they have actually presumed to exercise sovereign authority and jurisdiction to the full extent of their said jurisdictional claim. by appointing civil and military officers, making levies of men and money, rescuing delinquents from the hands of

justice of this State, at the expense of the blood, and the loss of the life of one of the subjects of this State in the execution of his lawful duty, and forbidding the officers of justice of this State to execute their offices, as appears from the papers attendant on his Excellency the Governor's speech, and other due information. That among these, to show the actual exercise of jurisdiction by the usurped government of the said grants, by the style and title of the State of Vermont, over the territory contained within the said jurisdictional claim, is the copy of a certain proclamation, bearing date the 18th day of July, 1781, purporting to be under the seal of the said pretended State, signed by Thomas Chittenden who styles himself their Governor; which after divers falsities and absurdities therein contained, asserts that commissions both civil and military, had then been lately issued by the supreme authority of the said pretended State, to persons chosen agreeable to the laws and customs thereof, in the several districts and corporations within the limits of the above mentioned western or jurisdictional claim, strictly requires, charges and commands all persons, of whatsoever quality or denomination, residing within the said western claim of jurisdiction, to take due notice of the laws and orders of the said pretended State; and to govern themselves accordingly, on pain of incurring the penalties therein contained; and strictly requires, charges, and commands all magistrates, justices of the peace, sheriffs, constables, and all other civil and all military officers, to be active and vigilant in executing the laws aforesaid, without partiality.

Resolved, That the Legislature of this State is greatly alarmed at the evident intention of Congress, and from political expedience, as it is expressed in a letter from his Excellency the President of Congress to his Excellency the Governor of this State, of the 8th of August last; and as is evinced in their acts of the 7th and 21st of the same month, enclosed therein, to establish an arbitrary boundary whereby to exclude out of this State, the greatest part of the territory described in the second resolution above mentioned, belonging most unquestionably to this State, as part, parcel and member thereof; and to erect such dismemberment, possessed by revolted subjects of this State, into an independent State, and as such to admit them into

the federal union of these United States, especially as the said two last mentioned acts seem to express the sense of Congress, that the territories of this State, by the Articles of Confederation are, and as in fact and truth, they are by the 2d and 3d articles thereof, guaranteed, and still more especially, as by a proviso in the 9th article it is provided that no State shall be deprived of territory, for the benefit of the United States.

Resolved, That it is the sense of the Legislature, that Congress have not any authority by the Articles of Confederation, in any wise, to intermeddle with the former territorial extent of jurisdiction or property of either of these United States, except in cases of disputes concerning the same, between two or more States in the Union; nor to admit into the Union even any British colony, except Canada, without the consent of nine States; nor any other State whatsoever; nor above all, to create a new State by dismembering one of the Thirteen United States, without their universal consent.

Resolved, That in case of any attempt by Congress, to carry into execution their said acts of the 7th and 21st of August last, this Legislature, with all due deference to Congress, are bound in duty to their constituents, to declare the same an assumption of power in the face of the said act of submission of this State, and against the clear letter and spirit of the 2d, 3d, 9th and 11th articles of Confederation, and a manifest infraction of the same; and do therefore hereby solemnly protest against the same.

Resolved, That a copy of these resolutions be forthwith made, and certified by the President of the Senate and the Speaker of the Assembly, in presence of his Excellency the Governor, who is hereby requested to attest the same with the Great Seal of this State, and transmit it without delay to Congress; to the end, that the same may be entered on their journals, or filed in their archives, in perpetuam rei memoriam; and that another copy, so certified as aforesaid, be delivered to the delegates of this State, for their use and guidance; and that they be, and hereby are expressly directed and required, to enter their dissent on every step, which may be taken in and towards carrying the said two last mentioned acts of Congress into execution."

FEDERAL FINANCES; NEW YORK'S EMBARRASSMENT.

The subject of the communication from the Superintendent of Finance (*ante*, p. 152) received consideration in the following concurrent resolutions, which were finally adopted on the 22d of November, 1781:

"*Resolved*, That it is with the greatest regret, that from the peculiar and distressed situation of this State, the Legislature are reduced to the necessity of informing Congress, that they entertain very slender hopes of their ability, in the present exhausted condition of the State, to comply with any of the requisitions of Congress; and that therefore the Legislature of this State, conceive it to be their duty to be thus explicit, to prevent the evils which might arise from any dependence that might be made, on the supposed abilities of this State.

Resolved, That to convince Congress of the real inabilities of this State, exhibited in the letter of his Excellency the Governor, to his Excellency the President of Congress, of the 5th of February last, it appears necessary to add to the misfortunes therein enumerated, the destruction of several valuable settlements on the frontiers since that date, and the usurpations of the pretended State of Vermont, over a district of Country of upwards of twenty miles in breadth, and upwards of one hundred and thirty miles in length, whereby the powers of government of this State, are so enfeebled, as to render the levy of aids in that part of the State, altogether precarious, if not impossible; that to our losses and expenditures may be also added, that beside recruiting the battalions of this State in the line of the Army, to upwards of 500 effectives each, this State has raised and brought into the field for the common defence, 1800 levies; some of them to serve until the first of December, but the greatest part of them until the first day of January next; each of whom, on an average, received from our inhabitants a bounty of at least sixty dollars in specie; and that hereby pledging the faith of the Legislature for the truth of the above mentioned facts, and those contained in the aforesaid letter, they are strongly induced to believe, that this State has not hitherto fallen short of any

other State, in contributing its full proportion to the necessary support of the common cause.

Resolved, That tho' in the opinion of the Legislature, the exhausted and inefficient condition of this State, is such, that it is unable at present, to comply with any requisition of Congress for money; and that they do therefore request Congress to suspend for the present, any farther requisitions of that kind on this State; yet, that they will most vigorously, by every way and means in their power, exert themselves in the common cause; and that in the meantime, as this State most cheerfully and readily passed a law assigning to Congress a duty on imports, agreeable to their recommendation, so they do hereby declare in behalf of this State, their readiness to comply with any measures to render the union of these United States more intimate, and to enable Congress, and so far as the condition of this State will permit, to contribute their proportion of well established funds; to the end, that the representative body of the American empire, may draw forth, and employ its resources with the utmost vigor.

Resolved, That considering the exposed condition of the frontiers of this State, the total want of gunpowder therein, its entire exclusion from foreign commerce, and its inability to purchase that necessary article of defence, that Congress be requested to lend to this State two tons of gunpowder, to be replaced as soon as this State shall be able so to do.

It having been represented by the Agent of this State, that he has fruitlessly applied to the proper officers in the Continental Department on the subject matter of the following resolution:

Resolved, That it is the earnest request of the Legislature, that Congress direct their servants in the departments of Commissary and Quarter Master, without delay, to settle with the Agent of this State, the accounts relative to the specific supplies furnished by this State, in consequence of the resolutions of Congress.

Resolved, That the condition of the artificers, serving the United States in this department, is miserable to the last degree; and that from considerations of justice, as well as from an apprehension that they will abandon the public service, it is the most earnest request of the Legislature,

that Congress interpose without delay, to afford them relief.

Resolved, That his Excellency the Governor be, and he is hereby requested to enclose a copy of these resolutions to his Excellency the President of Congress; and to enforce in his letter for that purpose, the subject matter of these resolutions."

1782. JULY. LEGISLATURE, SIXTH SESSION.

GEORGE CLINTON, Governor.

FIRST MEETING.

Governor Clinton issued a proclamation on the 11th day of June, 1782, convening the Legislature at Poughkeepsie the 3d of July. A quorum did not appear in both Houses until the 11th at which time the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—I have convened you at this time at the request of a committee of congress, appointed to confer with you and the legislatures of the neighboring states, on the necessity of providing competent means for a vigorous prosecution of the war. An application so respectable, and an occasion so important, rendered a compliance on my part indispensable. I forbear to detail to you particularly the subjects of this conference. They have been communicated to you by the committee, and I have confidence will receive a suitable attention.[1]

It is with great satisfaction I inform you of the birth of a Dauphin of France, which has been officially announced to me. Persuaded that on this occasion you will participate in the joy of a monarch and a nation to whom we are bound by the strongest ties of gratitude and friendship. A nation

[1] See *post*, p. 192, for resolutions concerning federal affairs.

who are now sharing with us in all the perils of a war, commenced and prosecuted on their part from the generous motive of establishing the liberties and independence of these states.

In the present respite from the more severe distresses and calamities of the war, I cannot forbear suggesting to you a work which I conceive ought not to be deferred, as the business of peace, the promotion and encouragement of learning. Besides the general advantages arising to society from liberal science, as restraining those rude passions which lead to vice and disorder, it is the peculiar duty of the government of a free state, where the highest employments are open to citizens of every rank, to endeavor by the establishment of schools and seminaries, to diffuse that degree of literature which is necessary to the due discharge of public trusts. You must be sensible that the war has occasioned a chasm in education, extremely injurious to the rising generation; and this affords an additional consideration for extending our earliest care to their instruction.[2]

Gentlemen, although the principles of our taxation (as far as they are calculated to compel the members of the community to contribute towards the public burthens, according to their respective abilities) are founded in justice, yet, from the great arrearages of tax which appears from the returns on your files, to be due, I conclude there must be some defect in our system; and I therefore submit to the legislature the necessity of revising the tax laws and particularly with respect to the mode of collection.[3]

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[2] This message contains the first executive suggestion concerning education. Governor Clinton referred to it again in his speech at the opening of the Legislature in January, 1784, and the subject there received legislative consideration.

[3] There was no general revision of the system of taxation, but the following tax laws were passed, namely, chap. 6, July 22, 1782, levying a tax of eighteen thousand pounds; chap. 9, July 24, 1782, to compel the payment of arrearages of taxes; chap. 49, March 25, 1783, to raise forty-two thousand one hundred pounds in specie.

I shall now leave with you the several acts of congress and public letters, which have been transmitted to me since the close of the last session, together with such other papers as contain information respecting the condition of the state; and should any other matters occur as objects requiring your deliberation at the present meeting, I will lay them before you by occasional messages.[4] Before I dismiss you, however, I conceive it my duty to observe that the enemy, notwithstanding their frequent disgraces and disappointments, discover a determination to persist in the war, and continue to cherish the delusive hope, if not of subduing, at least of detaching us from our great and benevolent ally, and of forming such a political connection with us as would be incompatible with our sovereignty. We are therefore called upon by every consideration of duty and of interest, to bear the most solemn and explicit testimony against a measure which would inevitably be attended with our ruin and infamy, and it especially behoves us at this time, with

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[4] The following are among the subjects included in these papers: Chap. 4, passed July 20, 1782, relative to the commissioners to be appointed in pursuance of the acts of Congress of the 20th and 27th of February, 1782, for the settlement of public accounts within this State; chap. 5, July 22, 1782, authorizing Congress to settle the proportion of war expenses to be borne by this State, "upon such principles as may in their judgment be just and equitable, the 8th article of the Confederation of the United States notwithstanding;" chap. 42, March 21, 1783, following a resolution of Congress adopted February 17, 1783, required the Surveyor-General to obtain and communicate to the Legislature more accurate information concerning taxable real property in this State.

Congress gave this subject further consideration, and on the 18th of April, 1783, amended the 8th article of Confederation, by providing that "all charges of war and all other expenses that have been or shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, except so far as shall be otherwise provided for, shall be apportioned according to the whole number of white and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each State."

Chap. 7, passed July 22, 1782, to prevent illicit trade with the enemy; chap. 44, March 21, 1783, to limit the operation of the acts to prevent illicit trade with the enemy.

an humble dependence on divine aid, to make the most strenuous exertions for expelling the enemy from our country, and thereby remove every apprehension of danger, either of their force or artifice.

GEO. CLINTON.

Poughkeepsie, July 11, 1782.

SPECIAL MESSAGES.

July 15. Thanking the Senate and Assembly for their addresses.

July 15. To the Assembly:

"GENTLEMEN.—I submit to your consideration, a letter from his Excellency the Commander-in-Chief of the 11th instant, on the necessity of providing means for an immediate supply of forage for the use of the army.[5] And also a letter from his Excellency the President of the State of New Hampshire, of the 2d instant, covering certain resolutions of the Legislature of that State, of the 21st ult.

GEO. CLINTON."

Poughkeepsie, July 15th, 1782.

July 16. To the Senate:

"GENTLEMEN.—I take this earliest opportunity of communicating to the Legislature, a letter from Alexander Hamilton, Esq. covering a copy of his appointment from the Superintendent of Finance, as Receiver of the Continental Taxes in this State.

GEO. CLINTON."

Poughkeepsie, July 16th, 1782.

July 20. To the Senate:

"GENTLEMEN.—I now submit to your consideration the petition of James Hamilton, late an Issuing Commissary to the Army of the United States, with his several accounts

[5] The Legislature responded to this recommendation by enacting chap. 10, July 24, 1782, to provide forage for the use of the army.

and papers to which it refers,[6] and also a letter from Mr. George Trimble, against whom it is represented, a suit has been commenced in the State of Connecticut, for an impress of flour for public use, made by him under the authority of this State. The peculiar circumstances of hardship, with which their respective cases would appear to be attended, induce me to recommend them to the attention of the Legislature.[7]

GEO. CLINTON."

Poughkeepsie, July 20th, 1782.

July 25. The Legislature adjourned to meet the first Tuesday (7th) of January, 1783, at such place as the Governor might designate.

SECOND MEETING.

Governor Clinton issued a proclamation on the 12th day of November, convening the Legislature at Kingston the 7th of January, 1783. A quorum did not appear until the 27th, when both Houses received the following

MESSAGE.

"GENTLEMEN.—Of the several papers which I have the honor to lay before you, the requisition of Congress for the current expenses, and for the payment of the interest of the domestic debt, will claim your first and principal attention.[8]

I cannot forbear recommending to your consideration, the case of the levies who have been successively in service

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[6] The salaries act, chap. 50, March 26, 1783, authorized the audit and payment of Hamilton's claim.

[7] A concurrent resolution, finally adopted on the 24th of July, 1782, authorized the State agent to settle the Trimble claim.

[8] Chap. 49, passed March 25, 1783, levying a tax of £42,100 in specie, required the Treasurer to pay thirty-six thousand pounds to the Superintendent of Finance of the United States.

for several campaigns; for altho' the United States have engaged ultimately for their payment, these troops consider the State as held to them in the first instance. Their accounts remain not only unpaid, but even unsettled; and the situation of the officers, and especially of such of them as engaged in the service without receiving any gratuity, is peculiarly disagreeable. I therefore submit to you the necessity of having their accounts adjusted, and making such further provision for their relief, as the circumstances of the State will permit.[9]

A revision of our Tax Laws, which I took the liberty of suggesting to you at the opening of the session, appears to me a part of the business of the last meeting which still remains incomplete; and I view it as an object so highly interesting, that I cannot omit again to mention it as meriting your deliberation. [See note 3.]

Altho' our frontiers have, during the latter part of the last season, been undisturbed, yet it would be unwise in us to presume that the enemy will persevere in their present defensive system only, I would intimate the expediency of making a conditional provision for the frontier service, and thereby prevent the inconvenience and expense of convening you for this purpose, should it become necessary. To aid you in your determinations on this business, I have directed the commanding officer of the troops, raised on bounties of unappropriated lands, to furnish me with the requisite return; and which, as soon as I receive, shall be communicated to you. Their number, tho' not equal to the establishment of a regiment, I have reason to believe is re-

[9] Chap. 24, passed March 8, 1783, amended a former act relative to the settlement of accounts of New York troops in the service of the United States; chap. 33, March 18, 1783, provided for the settlement of accounts of officers who had been deranged or had resigned; chap. 34, March 18, 1783, gave further directions to the auditors in relation to the settlement of accounts of the troops of this State; chap. 36, March 18, 1783, regulated pensions to sick and wounded soldiers discharged from the army of the United States.

spectable; and I have deferred forming them into a less corps, until I could avail myself of the sense of the Legislature on the expediency of farther attempts to complete the regiment; which, if effected, would save the expense of raising an additional number of temporary levies.[10]

Since your last adjournment, some violent outrages have been committed on the peaceable subjects of this State, residing in Cumberland County, by persons acting under the authority of the usurped government attempted to be established in the Northeastern part of this State. The papers which relate to this subject, will disclose to you what measures have been taken for the relief of the sufferers, and for preserving the peace of the country.

By the communications which attend this message, you will be informed that the negotiations for a peace were still depending, when our latest advices left Europe. This, instead of relaxing our exertions, I trust, will excite to vigorous preparations for carrying on the war, as the most certain means of ensuring a safe and honorable issue.

GEO. CLINTON."

Kingston, 27th January, 1783.

SPECIAL MESSAGES.

February 21. To the Senate:

"GENTLEMEN.—I embrace the earliest opportunity of communicating to the Legislature, copies of the treaty between their High Mightinesses the States General of the United Netherlands and these States. This important event will, I am persuaded, give peculiar satisfaction to the subjects of this State.

I have also by this message, to submit to your consideration, the subject matter of a letter from his Excellency Gen-

[10] The Governor, by chap. 16, February 21, 1783, was authorized to raise troops for the defence of the frontier.

eral Washington of the 17th instant, which, with the papers therein referred to, will be herewith delivered.[11]

GEO. CLINTON."

Kingston, 21st February, 1783.

February 22. To the Assembly:

"GENTLEMEN.— You will receive by this message, for the information of the Legislature, the last monthly returns of the regiments of this State, in the service of the United States; and returns of the recruits procured in consequence of the late law for completing them, with descriptive rolls of the deserters from the different regiments, you will perceive that those of the last description, are equal to the deficiencies stated in the returns; and I would therefore suggest the necessity of some more effectual provision for their apprehension, as it may not only save the expense of a further levy for filling the regiments; but put a stop in some measure, to future desertions.

In the course of the war, particularly the two last campaigns, I found it necessary to draw out the levies for the defence of the frontiers, before the necessary arrangements could be made for subsisting them from the public magazines; in consequence of which, they were fed by the distressed inhabitants of the frontiers, who have not received any compensation for the same. It therefore becomes my duty to recommend, that measures be adopted for the liquidation and discharge of these accounts.

GEO. CLINTON."

Kingston, 22d February, 1783.

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[11] February 27, 1783, the Senate adopted a resolution expressing the opinion that the exhausted state of the treasury rendered it impossible for the Legislature to provide for exchanging, for specie, the drafts mentioned in the letter from General Washington; and recommended the enactment of a law "more effectually to prevent the inhabitants of this State from purchasing or receiving articles of public property, which may be in the possession of the soldiery." An act, chap. 43, was accordingly passed on the 21st of March, 1783.

March 8. To the Legislature:

"GENTLEMEN.—I have the honor to lay before you, a letter from his Excellency the President of Congress, of the 24th ult. covering an act of the 21st recommending to the States the keeping up a constant representation in Congress; a letter from the Superintendent of Finance of the 22d ult. with certain acts and orders of Congress, of the 12th, 17th (4) and 18th ult. therein referred to; also a letter from his Excellency Governor Hancock, enclosing the copy of a resolution of both Houses of the Legislature of the State of Massachusetts, dated the 13th ult. for the purpose of appointing delegates to meet in Convention at Hartford, on the last Wednesday of April next, to confer on the necessity of adopting such a general and uniform system of taxation, by impost and excise, as may be thought advantageous to the several states, mentioned in the said resolution; and also for the information of the Legislature, a letter from the Honorable Alexander Hamilton, Esq. of the 24th ult. with the proceedings of Congress therein referred to.[12]

GEO. CLINTON."

Kingston, March 8th, 1783.

March 20. To the Assembly:

Objections by the Council of Revision to a bill "for the relief of certain insolvent debtors."

"The Council object to the bill

First. For that the relief intended to be given to the debtors named in the said bill, against their creditors, is by its preamble grounded upon a general representation of their necessitous circumstances; a reason which will equally apply to all confined debtors in this State; and therefore the bill on those principles, ought to be general and not particular.

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12 Ezra L'Hommedieu, Ephraim Paine, and John Lansing were appointed commissioners to attend the Hartford Convention.

2d. For that by the constitutional proceedings of the Legislature founded upon the truest principles of justice and equity, no private bill ought to be passed, unless the persons affected thereby, have an opportunity of being heard &c; and this being a private bill, it does not appear that the debtors, previous to their application to the Legislature, had given notice to their respective creditors; and thus the creditors, who are materially affected in their property, should the said bill become a law, are deprived of the only opportunity to assign reasons against the passing thereof."

The bill was not passed over the veto.

March 24. To the Legislature:

"GENTLEMEN.—I have the honor, by this message, to communicate to the Legislature for their information, a letter from the delegates of this State in Congress, of the 17th instant, with a copy of the Provisional articles agreed upon, between these United States and Great Britain.

GEO. CLINTON."

Kingston, 24th March, 1783.

The Provisional treaty was signed on the 30th of November, 1782, and the definitive treaty on the 3d of September, 1783.

March 24. To the Senate:

Objections by the Council of Revision to a bill "to remove certain doubts relative to the powers of the commissioners of sequestration."

The Council objected to several items of procedure authorized by the act. The bill was not passed over the veto.

March 28. To the Legislature:

"GENTLEMEN OF THE LEGISLATURE.—The dispatches accompanying this message announce to you the conclusion

of the preliminaries of a General Peace. I sincerely congratulate you on the happy event which restores so great a blessing to the world, and gives a firm establishment to the freedom and independence of these United States.

GEO. CLINTON."

Kingston, 28th March, 1783.

March 28. The legislature adjourned to meet at such time and place as should be designated by the Governor.

FEDERAL AFFAIRS.

In response to the communication from Congress relative to federal affairs, *ante*, p. 182, the Senate on the 20th of July, adopted the following resolutions, which were afterwards concurred in by the Assembly. They were ordered to be transmitted by the Governor to Congress, and to the executive of each State:

"*Resolved*, That it appears to this Legislature, after full and solemn consideration of the several matters communicated by the Honorable the Committee of Congress, relative to the present posture of our affairs, foreign and domestic, and contained in a letter from the Secretary for Foreign Affairs respecting the former, as well as of the representations from time to time made by the Superintendent of the Finances of the United States, relative to his particular department — that the situation of these States is in a peculiar manner critical, and affords the strongest reason to apprehend from a continuance of the present constitution of the Continental Government; a subversion of public credit; and consequences highly dangerous to the safety and independence of these States.

Resolved, That while this Legislature are convinced by the before mentioned communications, that notwithstanding the generous intentions of an ally from whom we have experienced, and doubtless shall still experience all possible support, exigencies may arise to prevent our receiving pecuniary succors hereafter, in any degree proportioned to our necessities. They are also convinced from facts within their own knowledge, that the provisions made by the re-

spective States for carrying on the war, are not only inadequate to the end, but must continue to be so, while there is an adherence to the principles which now direct the operation of public measures.

Resolved, That it is also the opinion of this Legislature, that the present plan instituted by Congress for the administration of their finances, is founded in wisdom and sound policy. That the salutary effects of it, have already been felt in an extensive degree; and that after so many violent shocks sustained by the public credit, a failure in this system, for want of the support which the States are able to give, would be productive of evils to pernicious to be hazarded.

Resolved, That it appears to this Legislature, that the present British Ministry, with a disposition not less hostile than that of their predecessors, taught by experience to avoid their errors, and assuming the appearance of moderation, are pursuing a scheme calculated to conciliate in Europe, and seduce in America—that the economical arrangements they appear to be adopting, are adapted to enlarging the credit of their government, and multiplying its resources, at the same time that they serve to confirm the prepossessions and confidence of the people; and that the plan of a defensive war on this Continent, while they direct all their attention and resources to the augmentation of their navy, is that which may be productive of consequences ultimately dangerous to the United States.

Resolved, That it is the opinion of this Legislature, that the present system of these States, exposes the common cause to a precarious issue, and leaves us at the mercy of events over which we have no influence; a conduct extremely unwise in any nation, and at all time, and to a change of which we are impelled at this juncture, by reasons of peculiar and irresistable weight; and that it is the natural tendency of the weakness and disorders in our national measures, to spread diffidence and distrust among the people, and prepare their minds to receive the impressions the enemy wish to make.

Resolved, That the general state of European affairs, as far as they come to the knowledge of this Legislature, affords in their opinion, reasonable ground of confidence, and assures us, that with judicious vigorous exertion on our part, we may rely on the final attainment of our object; but far from justifying indifference and security, calls

upon us by every motive of honor, good faith and patriotism, without delay, to unite in some system more effectual for producing energy, harmony and consistency of measures, than that which now exists, and more capable of putting the common cause out of the reach of contingencies.

Resolved, That in the opinion of this Legislature, the radical source of most of our embarrassments, is the want of sufficient power in Congress, to effectuate that ready and perfect co-operation of the different States, on which their immediate safety and future happiness depend. That experience has demonstrated the confederation to be defective in several essential points, particularly in not vesting the federal government either with a power of providing revenue for itself, or with ascertained and productive funds, secured by a sanction so solemn and general, as would inspire the fullest confidence in them, and make them a substantial basis of credit. That these defects ought to be without loss of time repaired, the powers of Congress extended, a solid security established for the payment of debts already inured, and competent means provided for future credit, and for supplying the current demands of the war.

Resolved, That it appears evidently to this Legislature, that the annual income of these States, admitting the best means were adopted for drawing out their resources, would fall far short of the annual expenditure; and that there would be a large deficiency to be supplied on the credit of these States, which, if it should be inconvenient for those powers to afford, on whose friendship we justly rely, must be sought for from individuals, to engage whom to lend, satisfactory securities must be pledged for the punctual payment of interest, and the final redemption of the principal.

Resolved, That it appears to this Legislature, that the aforegoing important ends, can never be attained by partial deliberations of the States separately; but that it is essential to the common welfare, that there should be as soon as possible a conference of the whole on the subject; and that it would be advisable for this purpose, to propose to Congress to recommend, and to each State to adopt the measure of assembling a general Convention of the States, specially authorized to revise and amend the Confederation, reserving a right to the respective Legislatures, to ratify their determinations."

GEORGE CLINTON, Governor.

The definitive treaty of peace was signed September 3, 1783, and the British evacuated New York on the 25th of November.

On the 9th of December, Governor Clinton issued a proclamation convening the Legislature in the city of New York on the 6th of January, 1784, but no quorum appeared until the 21st. On that day the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—It is not without much regret that I have been prevented from assembling you at an earlier period. The dilatory movement of the British force, subsequent to the provisional articles, and the measures preparatory to the late elections, have deprived me of the pleasure of congratulating you more seasonably on the great and important events which have taken place since the last sessions; and they have deprived the state of your aid in many affairs which earnestly demanded a legislative provision.

By the favor of Divine Providence, the seal is put to our independence, our liberties are established on the firmest basis, and freedom in this district seems to derive additional lustre from the objects which remind us of the despotism that so lately prevailed. While we recollect the general progress of a war which has been marked with cruelty and rapine; while we survey the ruins of this once flourishing city and its vicinity; while we sympathize in the calamities which have reduced so many of our virtuous fellow-citizens to want and distress, and are anxiously solicitous for means to repair the wastes and misfortunes

which we lament; how ought our hearts to overflow with love and gratitude to our adorable Creator, through whose gracious interposition, bounds have been set, and probably forever, to such scenes of horror and devastation.

Permit me to number with the pleasing events which call for our praise, the attention of those patriots, both citizens and soldiers, who have returned to this city to the honor and dignity of government. By their obedience to the laws, and their care to preserve peace and good order, they have disappointed the wishes of our enemies, and convinced the world by their moderation in prosperity and fortitude in adversity, that they merit the prize for which they have so nobly contended.

Viewing, as I trust you will, the blessings we now enjoy as effects flowing from our union, you cannot but be attentive to every measure which has a tendency to cement it, and to give that energy to our national councils which may be necessary to the general welfare. In this confidence I now lay before you such acts of congress as have been received in the recess of the legislature. As the address of congress which accompanies those acts, enters fully into the reasoning on the measures they recommend, I shall without enlarging submit them to your serious consideration with this single remark; that though fear may support a despotism, and an hereditary nobility uphold the throne of a limited monarch, nothing but good faith and public virtue can give authority or credit to a free republic. These sentiments, and others highly worthy of the attention of a free people, are strongly enforced in the last circular letter of our patriotic and illustrious commander-in-chief, a performance which I communicate with very great satisfaction; confident that it is derived from so high an authority, is executed with such wisdom and perspicuity and enforced with such affectionate zeal for our national honor and interest, that it cannot fail of making deep impressions, and of meeting with the most respectful notice.

Among other national objects, which the papers I shall now deliver you, will point out for your consideration, are the arrears due to our fellow-citizens, whose arms have so essentially contributed to the independence and security we enjoy; and it is with pleasure I embrace this occasion to do the line of this state the justice to observe that from the moment of their being disbanded to this hour, not one among them, to my knowledge, has been accused of misconduct or a violation of the laws. Their wants have not forced them into the commission of injuries, nor have their arms rendered them forgetful that they were citizens. Such citizens have a double claim to your patronage and protection.[1]

With the matters of superior moment, which at this time call for your serious examination, is an attempt of the British court, by a proclamation of July last to monopolize to themselves, the trade of the United States with the West Indies, by restricting the importation of American produce into those islands to British vessels only, and the exportation of West India produce into these states, to vessels of the same description. It is exceedingly difficult to hold any intercourse with a nation that will not suffer her commerce with other states to be governed by principles of equality and reciprocity; but that such a spirit of monopoly should prevail in the seller, (for Britain as a commercial nation abounding in manufactures, is principally to be viewed in this light) and be arbitrarily held out to the buyer, who has his choice of markets, is as inconsistent with the interest of trade, as it must be odious and disgustful to those whom it is intended to ensnare or depress. Permit me to observe, that one effect which the proclamation alluded to has a tendency to produce, is that of throwing the trade, heretofore mutually carried on between the inhabitants of

[1] This suggestion was included in chap. 45. passed April 27, 1784, which provided "for the settlement of the pay of the levies and militia for their services in the late war."

America and those of the West Indies, into the hands of persons styling themselves, or acting among us, in the disguise of British subjects, to the great dishonor of the American flag, the injury of the fair trader and real citizen, and the dimunition and corruption of national character. There is considerable ground to apprehend that the conduct of the British court in this instance is founded on a presumption that the confederated power of the United States is not adequate to prevent the innovation. It becomes therefore our interest and our duty, to undeceive them, and if the powers given by the confederation are not competent for this purpose, to enlarge them; for it is obvious that any partial exertions of the states, individually, to correct this evil, will prove ineffectual.[2]

While I am on the subject of commerce, permit me, gentlemen, to call your attention to the earliest and most effectual means for restoring and improving that of this state. Our ports, so long withheld from us, are at length open to all the world. Let us give to all protection, encouragement and security, by providing that equal justice be administered to the stranger as well as the citizen, that the recovery of debts be speedy and effectual, that the fulfilment of contracts be enforced, that our staples be so inspected as to prevent future imposition, and effectually to revive their reputation in foreign ports, where for want of sufficient care, it has been greatly impaired. By these means, credit, the parent of commerce, will multiply her benefits, and security from impositions add to the value of

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2 Chap. 53, passed May 4, 1784, authorized Congress to adopt certain regulations respecting the British trade. The preamble recites the proclamation mentioned by the Governor, and the act specifically vested in Congress power to "prohibit the importation of the growth or produce of the British West India Islands into these United States in British vessels, or to adopt any other mode which may most effectually tend to counteract the designs of Great Britain with respect to American commerce, so long as the said restriction shall be continued on the part of Great Britain;" but the act was not to become operative until the other states had passed similar laws.

our commodities; while the stranger it invites, will reduce the price of those we get from abroad.

The establishment of productive funds for the discharge of the interest, and for sinking, as soon as may be practicable, the principal of the public debts, is an object of so much moment, and which so essentially involves the prosperity of our citizens and the honor of government, that it cannot fail of claiming the most attentive consideration. Among the means that present themselves for making this provision, beyond direct taxation, are the disposition of public lands,[3] internal duties and excises,[4] marine passes, and a duty on sales at vendue.[5] The land office will, I flatter myself, be so regulated, as while it is rendered an object of revenue, it will at the same time, afford the utmost encouragement to the speedy settlement of the country. The cultivation of our lands ought to be one of our first cares, since the riches of a state is to be found in the number of its people. In this view, perhaps it may not be improper to invite the strangers to partake of the political blessings which we so happily enjoy, by facilitating the means of naturalization, and of obtaining and inheriting a portion of the unappropriated lands.[6]

It is my duty to recommend to your early consideration such a provision for the support of the officers of government as is consistent with its dignity, and will tend to procure, or continue in public office, men of integrity and abilities, now that a field is open for the display of talents and industry, and they have a prospect of advancing them-

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[3] The sale of certain forfeited estates was authorized by chap. 20, passed April 6, 1784; chap. 60, May 10, was intended to encourage the settlement and sale of waste and unappropriated lands; chap. 64, May 12, provided for the speedy sale of the confiscated and forfeited estates within this State.

[4] Duties on certain goods brought into the State by land or water were imposed by chap. 10, passed March 22, 1784.

[5] Auction sales were regulated by chap. 4, passed February 20, 1784.

[6] Chap. 60, passed May 10, 1784, provided for the settlement of waste and unappropriated lands.

selves and their families in private life. It is an undeniable truth, that in republics, where the force of government depends on a respect for the magistracy, ignorant or vicious magistrates must soon bring the laws into contempt, and involve the ruin of the state.[7]

Neglect of the education of youth is among the evils consequent on war — perhaps there is scarce anything more worthy your attention, than the revival and encouragement of seminaries of learning; and nothing by which we can more satisfactorily express our gratitude to the Supreme Being for his past favors; since piety and virtue are generally the offspring of an enlightened understanding.[8]

Permit me, gentlemen, to mention the necessity of proceeding to the immediate election of members to compose a council of appointment, as for want of this board, great inconveniencies have already arisen in this district of the state; which, from its peculiar situation, is destitute of the necessary officers of government.[9] I would also remind you that we have been for some time, unrepresented in congress, with a view that early measures may be taken for the appointment of delegates. I need not observe that there are few objects in which the honor and safety of the United States, and of each particular state is more interested, than in the character of the members of the great national council.[10]

A revision of the laws, passed during the war, in order to conform them to our present situation, the organization of the militia, and such provision for magazines and mili-

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7 The compensation of public officers was provided for by chap. 65, passed May 12, 1784.

8 The University act, chap. 51, passed May 1, 1784, was a partial response to this suggestion. It changed the name of King's College to Columbia, created a Board of Regents for the supervision of the College, and vested it with other powers. A supplemental act, chap. 15, was passed at the next session, November 26, 1784.

9 January 22nd, the Assembly elected a Council of Appointment.

10 Five delegates to Congress were elected on the 3rd of February.

tary stores as are necessary, as well for our own defence and security as a due compliance with the terms of our constitution and the confederation, will I trust also in the course of the session engage your attention.

The settlement of the accounts between this state and its citizens and the United States, has been most unfortunately protracted. The reasons which have exposed us to this great public inconvenience, are explained by my correspondence with the delegates and the superintendent of finance on this subject, which is presented for your information. A gentleman has at length undertaken the office of commissioner of accounts for this state, and will proceed to the execution of his trust without delay.[11]

You will perceive from the communications which relate to the subject that I have not been inattentive to the circumstances of the western posts within this state. They are undoubtedly of great importance for the protection of our trade, and our frontier settlements; and it was with concern, I learnt that the propositions made by the state for garrisoning those posts, were not acceded to by congress. It afforded me, however, some satisfaction to find that the commander-in-chief was in pursuit of measures for that purpose. But my expectations proved fruitless. The British commander in that department, treating the provisional articles as a suspension of hostilities only, declined to withdraw his garrisons, and refused even to permit us to visit those posts. It is necessary for me to add that it will now be impracticable to take possession of them until spring; and that I have no reason to believe that congress have or are likely to make any provision for the expense which will necessarily incur. It therefore remains for you to take this interesting subject into your further consideration.[12]

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[11] Chap. 44, passed April 27, was enacted "to facilitate the settlement of the accounts of the United States within this State."

[12] The Legislature adopted concurrent resolutions, requesting the Governor

Gentlemen, without detaining you any longer, I shall now leave with you my correspondence with Sir Guy Carleton, the proceedings of the council constituted for the temporary government of the southern district, and other papers necessary for your information, and in the course of the session I shall lay before you the accounts of my receipts and expenditures, and from time to time communicate by message such other matters as may require your attention. From the wisdom and magnanimity which the legislature hath uniformly manifested in every stage of the late arduous conflict, I have the highest confidence that your present deliberations will be conducted with harmony, be influenced by a steady attention to the public good, and be productive of the most extensive and essential advantages to our country.

GEO. CLINTON.

New York, January 21, 1784.

SPECIAL MESSAGES.

January 21. To the Senate:

Objections by the Council of Revision to a bill, passed at the last session, "declaratory of the alienism of persons therein described."

"1st. Because it tends to establish a principle which is contradictory to the fundamental laws of every civilized nation, to wit,

That the subjects of the State can by their adherence to its enemies, renounce their allegiance, and become aliens.

If this principle should be established, it must follow, that the Confiscation bill and every other law which

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to procure information from Congress concerning its purposes relative to the garrisons on the western frontiers, and also authorizing him to take such measures as he shall deem necessary to prevent any damage which might arise to the fortresses on the frontiers from the sudden evacuation thereof by the British troops until other garrisons can be sent to occupy them. See the Governor's special message of March 2, 1784.

punishes persons who have adhered to the enemy, as felons or traitors must be void, or manifestly unjust, since alien enemies, owing no allegiance and enjoying no protection, cannot be amenable to the Laws.

2dly. Because if this doctrine once has the sanction of law, any subject of the State who shall not hold lands within the same, may cast off his allegiance, and commit treason with impunity, provided he lives not within its jurisdiction; since as an alien he cannot be corporally punished.

3dly. Because the forfeitures refer back to the time of the Declaration of Independence by this State, when many of the persons who are the objects of this bill, lived within the jurisdiction of the State, unattainted, and unsuspected of treason or alienism, and might for *bona fide* considerations, have sold their property to the good citizens of the State, who would, if this act should pass into a law, be unjustly deprived thereof.

4thly. Because in the opinion of this Council, the doctrine established in the act, may induce Great Britain to adopt similar principles and many of the subjects of this State and the United States, holding property in the British Dominions, would in all probability, be deprived thereof, if this act should pass into a law.

5thly. Because it is impossible to understand what is intended by that part of the proviso, that excepts such persons from the penalties of the bill as have become subjects since the ninth day of July, one thousand seven hundred and seventy-six, no provision having yet been made for naturalizing aliens within this State, it must either be nugatory, or it must be intended to include all persons who have submitted to the laws and jurisdiction of this State at any time before the passing of this bill; in which latter case, every person now residing within any part of the State, and submitting to the government thereof, is within the proviso, and the law is thereby rendered useless, except

so far as it may be supposed to operate against such persons as have left the State. In which limited sense, it appears from the terms of the act, it was not intended to be understood.

6thly. Because it contradicts both the spirit and the letter of the provisional treaty with Great Britain.

7thly. That this State at present, not being engaged in war, can have no alien enemies, and as by the law of nations, alien friends may possess property; an act forfeiting such property, amounts to a declaration of war against their sovereign."

It should be observed that this bill was passed at the second meeting of the last session, and was sent to the Council of Revision on the 26th of March, 1783, two days before the Legislature adjourned, and after the provisional treaty of peace, but before the definitive treaty.

The bill was not passed over the veto.

January 21. To the Assembly:

Objections by the Council of Revision to a bill passed at the last session "to amend an act relative to debts due to persons within the enemy's lines."

"1st. Because, by rendering State securities payable for debts due to persons, who are placed in such a situation as to be supposed unfriendly to the government, a distinction is held up between current money and State securities, which is highly dishonorable to the State, and destructive to its credit.

2dly. Because, if the securities and bills of credit mentioned in the act, are equal in value to money, no law is necessary to render them receivable for debts, and the coercion used for that purpose, tends to discredit them. If they are not equal, the rendering them receivable is a fruitless attempt to supply by force, the want of credit, and must in the end, be destructive of all confidence in the faith of government.

3dly. Because, if the securities tendered are less valuable than money, the persons compelled to receive them are so far punished by this State, and this without any trial or designation of the offence, other than that of having remained within or near the enemy's lines, which many citizens may, and have been constrained to do.

4thly. Because it militates against that Article of the treaty with Great Britain, which stipulates for the just payment of debts on either side, since it is not in its operation, confined to such persons as are both plaintiff and defendant, subjects of this State.

5thly. Because by the second section the essential right of trials by jury, secured by the Constitution to the citizens of this State, in all cases where it had been used, may be effectually evaded in the cases there enumerated, by compelling a plaintiff to submit his cause to the determination of referees.[a]

For that the special matters which defendants are authorized by this bill, to plead before such referees, may in point of form or substance, be defectively set forth, and the referees for want of judicial powers in law to determine on its validity, would deprive the plaintiff of the right of demurring.

6thly. For the powers given to such referees to determine the plaintiff's demand, upon principles of equity and good conscience, is a virtual establishment of a new court of chancery, in violation of the Constitution, which declares that no new court can be instituted, but such as shall proceed according to the course of the common law.[b]

7thly. Because in the last enacting clause, it is expressly provided, that nothing in the said act contained, shall be construed to extend, to any person that heretofore hath been, now is, or hereafter shall be a prisoner with the enemy, whereby all those who have by their exertions in

[a] Const. 1777, § 41.
[b] Const. 1777, § 41.

the common cause, unfortunately come under the above description are absolutely excluded from the advantage intended to be secured to their fellow citizens, by the said bill."

This bill was passed in March, 1783, and was sent to the Council of Revision just before the Legislature adjourned.

The bill was not passed over the veto.

January 28. Thanking the Senate and Assembly for their addresses.

January 30. To the Senate:

"GENTLEMEN.— It is with pleasure I embrace the earliest opportunity of laying before you, a proclamation of the United States in Congress assembled, under their seal, dated the 14th day of January instant, announcing the ratification of the definitive articles of peace and friendship, between these States and his Britannic Majesty, and enjoining a due observance thereof.

I also submit to your consideration the recommendation of the United States in Congress assembled, in conformity to the said articles contained in their resolution of the said 14th of January instant.[13]

GEO. CLINTON."

New York, 30th January, 1784.

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[13] That the Legislature was not ready to make the concessions recommended by Congress, is manifest from the following concurrent resolutions finally adopted on the 31st of March, 1784:

"Resolved, That it appears to this Legislature, that in the progress of the late war, the adherents of the King of Great Britain, instead of being restrained to fair and mitigated hostilities, which are only permitted by the laws of nations, have cruelly massacred without regard to age or sex, many of our citizens, and wantonly desolated, and laid waste a great part of this State, by burning not only single houses and other buildings in many parts of this State, but even whole towns and villages, and destroying other property throughout a great extent of country, and in enterprises which had nothing but vengeance for their object.

And that in consequence of such unwarrantable operations, great numbers of the citizens of this State, have, from affluent circumstances been reduced to poverty and distress.

Resolved, That it appears to this Legislature, that divers of the inhabitants of this State, have continued to adhere, to the King of Great Britain,

The following is the resolution of Congress referred to in the Governor's message:

"*Resolved*, Unanimously, nine States being present, that it be, and it is hereby earnestly recommended to the legislatures of the respective states, to provide for the restitution of all estates, rights and properties, which have been confiscated, belonging to real British subjects and also of the estates, rights and properties of persons resident in districts, which were in the possession of his Britannic Majesty's arms, at any time between the 30th day of November, 1782, and the 14th day of January, 1784, and who have not borne arms against the said United States and that persons of any other description, shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain 12 months unmolested in their endeavors to obtain the restitution of such of their estates, rights and properties, as may have been confiscated; and it is also hereby earnestly recommended to the several states, to reconsider and revise all their acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent not only with justice and equity, but with that spirit of conciliation, which, on the return of the blessings of peace, should universally prevail; and it is hereby also earnestly recommended to the several states, that the estates, rights and properties of such last mentioned persons should be restored to them, they refunding to any persons who may be now in possession, the bona fide price, (where any has been given) which such persons may have paid on purchasing any of the said lands, rights or properties since the confiscation."

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after these states were declared free and independent, and persevered in aiding the said King, his fleets and armies, to subjugate these United States to bondage.

Resolved, That as on the one hand, the rules of justice do not require, so on the other, the public tranquillity will not permit, that such adherents, who have been attainted, should be restored to the rights of citizenship.

And that there can be no reason, for restoring property, which has been confiscated or forfeited, and the more especially, as no compensation is offered, on the part of the said King, and his adherents, for the damages sustained by this State and its citizens, from the desolation aforesaid.

Resolved, Therefore, That while this Legislature entertain the highest sense of national honor, of the sanction of treaties, and of the deference which is due to the advice of the United States in Congress assembled, they find it inconsistent with their duty to comply with the recommendation of the said

February 3. To the Assembly: Transmitting letters and petitions from Hugh Hughes, Morgan Lewis, and Udny Hay, late Deputy Quarter Master Generals, and Andrew Bostwick, Deputy Forage Master General, relating to public contracts made on behalf of this State and the United States during the late war.[14]

February 7. To the Senate:

"GENTLEMEN.—By this message I submit to your consideration, a letter from his Excellency the Governor of Massachusetts of the 31st of October last, together with certain resolutions of the General Court of that State of the 21st, 22d and 28th, of the same month. I forbear making any comment on the subject; being fully persuaded that the Legislature will adopt the most proper measures, for vindicating the rights of this State, against the new and extraordinary claims which those acts affect to establish.[15]

GEO. CLINTON."

New York, February 7th, 1784.

United States, on the subject matter of the fifth Article of the said Definitive Treaty of Peace."

The Legislature also took positive action on the question by enacting chap. 20, April 6, 1784, providing for the immediate sale of certain forfeited estates, and chap. 64, May 12, for the speedy sale of the confiscated and forfeited estates within this State.

[14] These papers were referred to a committee in the Assembly, and as a result of its consideration, an act, chap. 48, was passed April 29, 1784, continuing and reviving the act of March 21, 1783, staying execution in suits against public officers on contracts, and acts by them made and done in behalf of the United States and of this State.

[15] The Legislature adopted a concurrent resolution February 20 and 21, requesting the Governor to transmit "a copy of the law, entitled 'An act to appoint commissioners to complete the running of a jurisdiction line, between this State and the State or Commonwealth of Massachusetts,' and request him to lay the same before the Legislature of that State, that such provision may be by them made in the premises as they shall deem necessary to carry the salutary intention of the said law into effect."

See special message of April 12, 1784.

February 17. To the Assembly:

"GENTLEMEN.—You will receive with this message, a letter from his Excellency the Governor of the State of Connecticut, of the 4th of February inst. together with several papers therein referred to, respecting an outrage said to have been committed on a certain Mr. Barnes, a citizen of that State. And I submit to the consideration of the Legislature, whether their interposition is not necessary, as well to give relief in the present case, as to prevent a repetition of such acts of violence in future.[16]

GEO. CLINTON."

New York, February 17th, 1784.

February 25. To the Senate:

"GENTLEMEN.—I take the earliest opportunity of communicating for your information, certain resolutions of Congress of the 1st of November last, for procuring a full representation in that body; also a letter from his Excellency the Governor of the State of Virginia, providing for measures which I had the honor to recommend to your consideration at the opening of the present session.

The subject matter of a letter of the 9th instant, from Egbert Benson, Esquire, Attorney General of this State, which accompanies this message, is also submitted to the consideration of the Legislature.

GEO. CLINTON."

New York, 25th February, 1784.

March 2. To the Assembly:

"GENTLEMEN.—I have the honor to lay before you, for your information, a letter I have received from the Presi-

[16] It seems that Stephen Barnes was forcibly taken in Connecticut and brought into New York so that civil process might be served on him in this State. Chap. 24, passed April 8, 1784, authorized his discharge, and prohibited his arrest except on criminal process during six days after his discharge.

dent of Congress, dated the 20th of February last, with a certificate of the Secretary, by which it appears, that business of the highest importance to the safety, honor and happiness of the United States, is at a stand for want of a representation, agreeably to the Articles of Confederation.

It will also appear by this letter that no arrangements have been made for garrisoning the western and northern posts in this State, and securing our frontiers; and therefore no satisfactory information can be expected from Congress, on the subject of the concurrent resolutions of the Senate and Assembly of the 20th and 30th of January, until such a representation of the States take place, as will enable them to proceed to business. [See note 12.]

GEO. CLINTON."

New York, March 2d, 1784.

March 27. To the Assembly:

"GENTLEMEN.—I think it my duty to lay before you several letters, I have received from different persons in Cumberland County, by which you will be informed of the disorders which prevail in that part of the State, and of the disagreeable situation to which many of our fellow subjects, are thereby reduced.

GEO. CLINTON."

New York, 27th March, 1784.

April 1. To the Assembly:

Objections by the Council of Revision to a bill "for apprehending of persons in any county upon warrants granted by the justices of the peace of any other county."

So far as disclosed by the veto, the bill did not involve any question of principle, but only details of procedure and questions of inconvenience or hardship as applied to persons included in the provisions of the bill. The bill was not passed over the veto.

April 3. To the Assembly: Governor Clinton transmitted a statement of his public receipts and expenditures since the beginning of his administration.

April 12. To the Assembly:

"GENTLEMEN.—I have the honor to lay before you for your information, a letter from his Excellency the Governor of the State of Massachusetts, together with an act of the Legislature of that Commonwealth, appointing commissioners to ascertain the boundary line between the two States. [See note 15.]

GEO. CLINTON."

New York, April 12th, 1784.

April 12. To the Assembly:

"GENTLEMEN.—I take the earliest opportunity to submit to your consideration a letter I have received from the President of Congress, dated the 1st of this month, on a subject so interesting as to claim your immediate attention.

GEO. CLINTON."

New York, 12th April, 1784.

April 19. To the Senate: Transmitting a letter from the New York delegates in Congress.

April 20. To the Senate:

Objections by the Council of Revision to a bill "to enable the mayor, recorder and aldermen of the city and county of New York to raise monies by tax for the purposes therein mentioned." [17]

"Because the Council conceive that life, personal liberty and property are the blessings which governments were framed to preserve and protect. That the two first are in

[17] The New York tax bill was passed over the veto, and became a law, chap. 43, on the 26th of April, 1784.

little danger under the most despotic rulers, while the last, which holds out a continual temptation to rapacity of Governors, is only secured even in free States by the most vigilant attention.

That our happy Constitution has not been unmindful of proper guards for the security of this essential right. If the Legislature frame the laws under which the taxes are levied, if the assessors apportion them according to the known and stated rules, being in this mere executive officers, they may be punished by the judicial, for a violation of their duty; and thus the Legislative, Executive and Judicial being kept distinct, each serves to check the other, and protect the property of the citizen. That the bill under consideration removes all these checks, when it directs that the sums to be raised "be rated and assessed by the vestrymen, according to the estates and other circumstances and abilities to pay taxes, of each respective person collectively considered." That property being the measure of taxation, to depart from this rule, and to substitute an imaginary one, which only exists in the opinion of the assessors, is at once to vest him with legislative and executive powers, and to take off the control of the judicial, since where no law is, there can be no transgression.

If the assessors are of the richer class of citizens, they will overburden the poor, if chosen from among the poor, they will endeavor to oppress the rich. Thus the first effect of this mode of taxation, will be parties and dissensions among the different classes of citizens, whom mutual interest and the policy of government should bind together. Party spirit will make this law the engine of oppression, and the avarice and resentment of those who prevail at elections, becoming the law of the land, may be as fatal to free citizens, as the rapacity of the most despotic tyrant. That these objections have peculiar weight, when applied to a commercial city, where selfish views may stimulate assessors to oppress their rivals in trade, and destroy that security which makes the basis of commerce.

That tho' pressing emergencies and public dangers may in some circumstances, have paliated this mode of taxation, nothing can justify it in a time of profound peace, when regular systems should be adopted, more especially when the objects for which the tax is to be collected, are not of sufficient magnitude to excuse the introduction of such an uncontrolled power as this vests in the vestrymen."

April 29. To the Senate: Transmitting an act of Congress passed April 19, with accompanying letters from the President of that body. This act recommended that each State be at all times represented in Congress by at least three delegates. The Legislature on the 30th of April, adopted a concurrent resolution directing that another delegate repair immediately to Congress.

May 6. To the Assembly:

Objections by the Council of Revision to a bill "for raising one hundred thousand pounds within the several counties therein mentioned." [18]

The objections accompanying this bill were the same as those accompanying the foregoing bill authorizing a tax in the city of New York, except that the clause in the earlier objections applying them specifically to New York as a commercial city, and the clause at the end of the objections referring to the uncontrolled power vested in the vestrymen, were omitted.

May 10. To the Assembly:

Objections by the Council of Revision to a bill "to encourage the settlement of the waste and unappropriated lands within this State." [19]

The Council object to that part of the 5th enacting clause of the bill "by which certificates issued by the Continental

[18] This bill, for raising £100,000 in certain counties, was passed over the veto, and became a law, chap. 58, on the 6th of May, 1784.

[19] This bill, relating to the settlement of unappropriated lands, was passed over the veto, and became a law, chap. 60, on the 10th of May, 1784.

Loan Officer in this State for monies lent to the United States by the inhabitants of this State, reduced to their value in specie by the Continental scale of depreciation, are made receivable by this State for the said waste and unappropriated lands.

1. Because the said certificates are the proper debt of the United States, and not of this State only; and it is inconsistent with the public good and public faith, that the Legislature should by law, barter away the public property of this State, for the payment of the debts of the United States, until the debts of this State are fully and perfectly discharged.

2. Because receiving such certificates as aforesaid, may interfere with the arrangement of the United States for discharging the public debts.

3. Because the receiving the said certificates will open a door to fresh frauds, and give a certain disguise and covering to past ones, which will render their detection altogether impossible, until the accounts of the respective States with the United States are settled; and though the Legislature may entertain the highest opinion of the uprightness of the public servants of Congress, they can never be justified by their constituents in passing laws that hold up to such servants, the highest temptations to depart from their integrity, and give them the security, that such fraud, if ever discovered will be when their representatives only can answer for it."

May 12. To the Senate:

Objections by the Council of Revision to a bill "for the speedy sale of the confiscated and forfeited estates within this State, and for other purposes therein mentioned."[20]

The objections were based in part upon grounds stated in the foregoing veto of the bill relative to the sale of waste

[20] This bill, for the sale of forfeited estates, was passed over the veto, and became a law, chap. 64, on the 12th of May, 1784.

and unappropriated lands to which the Council referred for reasons against the present bill. The Council also objected to the bill because it did not require security from the Commissioners, and said that in case of their misconduct the State would be without remedy.

May 12. To the Assembly:

Objections by the Council of Revision to a bill "to preserve the freedom and independence of this State, and for other purposes therein mentioned."[21]

"The Council object to the bill,

1st. Because, by the first enacting clause, the voluntarily remaining with the fleets and armies of the King of Great Britain, is made an offence highly penal, whereas by the known laws of all nations, persons who remain with their possessions when the country is over-run by a conquering army, are at least excused, if not justified; and should our laws be made to retrospect in a manner so directly contrary to the received opinions of all civilized nations, and even the known principles of common justice, it will be highly derogatory to the honor of the State, and fill the minds of our fellow citizens with the apprehension of suffering in future some heavy punishment for that conduct which at present is perfectly innocent. Besides, was this bill free from the objections which lie against all retrospective and ex post facto laws,[c] the inconveniences which must unavoidably follow, should it become a law of this State, are fully sufficient to show that it is totally inconsistent with the public good; for so large a proportion of the citizens remained in the parts of the Southern District which were possessed by the British Armies, that in most places it would be difficult, and in many absolutely impos-

[21] This bill, to preserve the freedom and independence of the State, was passed over the veto, and became a law, chap. 66, on the 12th of May, 1784.

[c] U. S. Const. Art. 1, § 9, clause 3; § 10, clause 1.

sible, to find men to fill the necessary offices, even for conducting elections until a new set of inhabitants could be procured.

2dly. Because the persons within the several descriptions of offences enumerated in the first enacting clause, cannot be adjudged guilty of misprision of treason, but on conviction; and such conviction cannot be had but on a prosecution to be commenced, in the course of which it will be necessary to show, that the defendant comes within one or other of the descriptions in the said clause. This must be a prosecution, by reason of the part the defendant may have taken during the war, directly in the face of the 6th article of the definitive treaty, by which it is stipulated that no future prosecutions shall be commenced against any person or persons, for, or by reason of the part which he or they may have taken in the war, and that no person shall on that account suffer any future loss or damages, either in his person, liberty or property.

3dly. Because by the second enacting Clause of the said bill, the Inspectors and Superintendents of the election are constituted a court, they being by the said bill expressly authorized to inquire into, and determine the several matters in the first enacting clause; and their judgment is conclusive to disfranchise. This is instituting a new court, which does not proceed according to the course of the common law, and is expressly against the forty-first section of the Constitution."

May 12. The Legislature adjourned to meet at such time and place as the Governor might designate.

GEORGE CLINTON, Governor.

FIRST MEETING.

Governor Clinton issued a proclamation on the 20th of August, convening the Legislature at New York on the 4th of October; a quorum did not appear until the 18th, at which time he delivered the following

OPENING SPEECH.

"GENTLEMEN OF THE SENATE AND ASSEMBLY.—Since the close of the last session the legislature of the state of Massachusetts have thought fit to set up a claim to lands, which it is to be inferred from their petition to the honorable the United States in congress, lie somewhere within the ancient jurisdiction of this state, but in what part or to what extent is left in obscurity. They have, notwithstanding, requested that a federal court may be appointed for inquiring into and determining such claims; and congress have accordingly assigned the first Monday in December next for the appearance of both states, and such other proceedings as are directed by the articles of confederation and perpetual union. From the act of congress of the 3d day of June last, on this subject, and the papers accompanying it, you will perceive the necessity of appointing agents to manage the controversy on the part of this state; and of calling for an explicit description of the lands claimed by Massachusetts, without which, we must be exposed in our defence to unnecessary difficulties and expense.[1] The im-

[1] Chap. 4, passed November 12, 1784, appointed James Duane, John Jay, Robert R. Livingston, Egbert Benson and Walter Livingston, as agents to represent this State in the controversy with Massachusetts, outlined in the Governor's speech. Two other acts relating to the Massachusetts boundary

portance of these measures and the election of delegates and of members to compose a council of appointment for the ensuing year, were the principal inducements to your being assembled at a season which I am sensible must be inconvenient.

The acts of congress of 27th, 28th and 29th of April, respecting the arrears of interest of the national debt, and the expenses for the year 1784, and a requisition of money to discharge the same,[2] and another act of the third of June, recommending it to this and some other of the states to raise a proportion of their militia for taking possession of the western posts, guarding the public stores, and protecting the treaties with the Indians (all which are now laid before you) came to my hands sometime after the last adjournment. It appeared to me impracticable after near six months had been spent by the legislature in public business without any intermission, to have convened you at an earlier period, and it was the less necessary as before the recommendation for raising these troops was communicated to me, it had been discovered that there was not the least probability they could this season be employed in the principal service for which they were intended. These different subjects are now submitted to your deliberate consideration, and I am persuaded the result will be dictated by a regard to the sacred rules of justice, to the honor of the state, and to the principles of the federal compact.

Gentlemen, the injury which this state sustains in its growth and settlement by the claims of absentees and aliens to large tracts of uncultivated lands, call for your

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line were passed at this session, namely, chap. 2, November 11, 1784, appointing Simeon De Witt an additional commissioner under the act of 1783; and chap. 28, March 7, 1785, authorizing Congress to appoint commissioners to run and establish the boundary line under the agreement of 1773, which agreement is fully set forth in the act.

[2] In response to this suggestion, relative to claims by the Federal government, the Legislature passed chap. 53, April 4, 1785, requiring the treasurer to pay into the treasury of the United States $147,734 9-90.

attention. These claimants contribute nothing to the exigencies of government, they retard the progress of improvement, while their estates continue to increase in value by the labor and industry of the citizens who settle and cultivate the adjacent lands. Your wisdom will undoubtedly suggest some remedy consistent with the treaty, and the principles of equity, for a mischief which becomes daily more obviously detrimental.

I need not mention that the legislature have long since seen the necessity of an estimate of the value of taxable property throughout the state, but the measures which they adopted for this purpose have hitherto proved ineffectual; without it, government cannot be administered on wise and fixed principles, for it neither can be known to what amount the whole state may be taxed without oppression, nor what is the comparative value of the wealth of the respective counties and districts, however essential to equal taxation, and for preventing those discords and animosities which too frequently take place in fixing of the quotas.

The management of the public revenue also wants system; there is no mode established for drawing the income, expenditures or debts of the state to a point, nor is it in the power of the best informed at present, to produce a tolerable estimate of them, though it must be admitted that this is a branch of information so useful that it cannot without manifest inconvenience be dispensed with.

A revision of our laws is also necessary to digest them in one code, which shall include such of the acts of the late colony and of the British statutes as are adopted by the constitution;* and to form a general regulation for highways, and the internal economy of districts and precincts, now continually calling for partial provision, is a work I would recommend as highly worthy of the consideration of the legislature.[3]

* Const. 1777, § 35.

[3] The revision of the statutes was considered at the next session. See chap. 35, passed April 15, 1786.

It is found by experience that some of the laws of the last session, particularly the act establishing an university in this state,[4] and the impost act,[5] require amendment, as well to render them more easy in their execution, as more effectual in their operation. The officers acting immediately under them are directed to state, for your information, the defects which have been discovered.

Several other matters which I had the honor to lay before the legislature at the opening of the last session, were not (for want of time) brought to maturity, and particularly a law for regulating the militia and providing for magazines and arsenals agreeable to our constitution and the confederation. These are of such importance to the honor and safety of the state, that I cannot omit repeating them.[6]

I shall now leave with you such papers as I have received during the recess, and which may be necessary for your information; among these are the proceedings of the commissioners of Indian affairs, containing a particular detail of their transactions, and the result of the business committed to them.[7]

Gentlemen, although I have thought it my duty at the opening of a session to point out the various matters which appeared to me to claim the attention of the legislature, yet, should it be found inconvenient to the members to continue long together at this time, such of them only may be taken into immediate consideration as cannot with safety be delayed until the next meeting.

GEO. CLINTON."

City of New York, October 18, 1784.

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[4] A supplemental university act, chap. 15, was passed November 26, 1784.

[5] Chap. 7, November 18, 1784, imposed duties on goods imported into this State.

[6] A military act, chap. 25, was passed at the next session, April 4, 1786.

[7] Several papers relating to Indian affairs were referred to a committee in the Senate, whose deliberations resulted among other things in chap. 25,

SPECIAL MESSAGES.

October 22, 23. Thanking the Senate and Assembly respectively for their addresses.

October 27. To the Senate:

"GENTLEMEN.—I have the honor to lay before you, a letter from the Commissioners of Indian Affairs, and their associates, dated the 21st of October instant, signed by Henry Glen, Esq. as their president, on a subject so interesting to the State, that I trust it will meet your immediate consideration. You will also herewith receive several other letters and papers on Indian affairs, for your information. On these I shall forbear to make any comment; especially as the proceedings of the Commissioners, communicated at the opening of the session, contain a minute and faithful detail, not only of all their transactions, but also copies of every letter and message relative thereto; and will enable the Legislature to form a proper judgment of this interesting business. [See note 7.]

GEO. CLINTON."

New York, 26th October, 1784.

November 4. To the Assembly:

"GENTLEMEN.—As the proposals contained in the letter and papers which accompany this message came from a character truly respectable; and appear to have been influenced by a desire to promote the great cause of religion and humanity, I am persuaded they cannot fail to engage your serious attention. [The records do not contain the papers.—ED.]

GEO. CLINTON."

New York, 3d Nov. 1784.

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passed March 3, 1785, to carry into effect the act of Congress of the 11th of February, 1785, providing for the settlement of accounts with the Indian officers therein named.

November 25. To the Senate:

Objections by the Council of Revision, to a bill authorizing the widow and administrators of Joost Debeavois, deceased, to sell his real estate.

The Council said that all the real property of which the decedent died seized was by the bill vested in the administrators without reservation, whereby the widow was deprived of her right of dower, and that the surplus to be derived from the sale after the payment of debts and expenses, was to be placed at interest by the administrators for the use and benefit of the widow and children of the deceased, but that the administrators were not required to give security.[8]

November 27. To the Senate:

Objections by the Council of Revision to a bill "for the more easy assessment of taxes in the city and county of New York, altering the mode of punishment in certain cases of petit larceny, and for the confinement of vagrants and lewd persons to hard labor."[9]

"Because by the said bill, a power is given to the mayor, recorder and aldermen, to confine and set to hard labor, 'all and every lewd person or persons, leading debauched lives, who are now, or from time to time shall come into or sojourn within the jurisdiction of the city and county of New York,' without defining what is intended by leading debauched lives, thereby putting it in the power of the said mayor, recorder and aldermen to punish and imprison any person or persons, residing within the said jurisdiction, without trial or conviction, or without his, or their having

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8 The Debeavois bill was not passed over the veto, but another act, chap. 26. was passed March 7, 1785, authorizing the sale of eight acres of Joost Debeavois' land for the payment of debts.

9 This bill was not passed over the veto, but another act, chap. 40, on the same general subject was passed and became a law March 18, 1785, relating to taxes, general sessions, petit larceny, and disorderly persons in New York.

committed any offence against the known laws of the land. Thus depriving, as well citizen as sojourner, entitled to protection of the benefit of a trial by jury, secured to them by the constitution,[a] and of the Habeas Corpus law, the best and most effectual check on the despotism of magistrates. And because the other parts of the bill had before invested the mayor, recorder and aldermen with full and ample powers for the punishment (on conviction) of an offender against the laws of the State, and even of extending that punishment to idle and disorderly vagrants, not having visible means of livelihood, beyond which a regard to the liberty of the subject should not in any case extend the discretionary power of the magistrate."

November 29. The Legislature adjourned to meet the third Tuesday (18th) of January, 1785.

SECOND MEETING.

A quorum did not appear in both houses until the 27th of January, 1785.

SPECIAL MESSAGES.

January 28. To the Senate: Governor Clinton transmitted papers received by him during the legislative recess.

February 2. To the Senate:

"GENTLEMEN.—You will herewith receive a letter of the 20th of November last, subscribed by Peter, and five other Oneida Indians; and the petition of John Harper and others, delivered to me this morning, which are now communicated, as immediately relating to a subject submitted to the consideration of the Legislature, by my message of the 28th of last month.[10]

GEO. CLINTON."

New York, February 2, 1785.

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[a] Const. 1777, §§ 13, 41.

[10] It appears from resolutions adopted by the Senate February 5, 1785, that the Oneida Indians complained that John Harper had been guilty of

February 11. To the Assembly:

"GENTLEMEN.—I have the honor to lay before the Legislature, a resolution of Congress of the second instant, recommending to the several States to revise their laws respecting forgery, and affix such penalties as they may adjudge necessary to prevent the forgery of securities of every denomination, issued by authority of the United States in Congress assembled.[11] A letter from the Surveyor General of this State, of the 29th of last month, stating difficulties which attend the execution of his office;[12] and a letter from the Sheriff of Dutchess County, of the fifth of February, informing of the loss of the Court House and Jail of that county by fire, and representing the inconveniences and losses he may thereby be exposed to, unless legislative provision be made for his indemnity.[13]

GEO. CLINTON."

New York, February 11, 1785.

February 15. To the Senate:

"GENTLEMEN.—I submit to your consideration, the propriety of adopting measures at your present meeting, for having the division line between this State and Pennsyl-

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fraudulent practices in obtaining or trying to obtain title to a large tract of land on the Susquehannah river, wherefore the Governor was requested to issue his proclamation to prohibit all persons from "purchasing, leasing, entering upon, or intermeddling with the lands pretended to be granted by the said Indians to the said John Harper, whose proceedings respecting the same, being a manifest violation of the Constitution* of this State are null and void, and have a direct tendency to produce dangerous discontents and animosities among the Indians." The resolution was not concurred in by the Assembly.

11 Chap. 88, passed April 25, 1785, made it a felony "without benefit of clergy, to counterfeit or forge, or to pass, knowing the same to be counterfeit, any of the public certificates of the United States, or of this State, or any species of gold or silver money now or hereafter to be current in this State."

* Const. 1777, § 37.

12 Chap. 23, passed February 26, 1785, authorized the Surveyor-General to obtain maps, papers, and records in the possession of his predecessor.

13 Chap. 67, April 11, 1785, provided for building a court house and jail in Dutchess county.

vania run and marked. There does not I believe, at present exist any difference of sentiment in the two States, respecting this boundary; as the point or place of beginning at the northeast corner of Pennsylvania was, as I have been informed, some time since ascertained with a degree of accuracy, by the ingenious Mr. Rittenhouse of Philadelphia, on principles which I presume are admitted by both parties. It will, however, be readily perceived, that unless this line is ascertained, so that it can be accurately known and distinguished, controversies between individuals, as settlements under the respective States advance, may take place, which will not only be attended with great inconveniences to those immediately involved in them, but may be productive of consequences disagreeable to the two States, whose mutual interest it is to preserve and cultivate entire harmony.

I would only observe, that the Legislature of Pennsylvania are now sitting, and I have reason to believe they will cheerfully concur with us in a measure so salutary and necessary to both.[14] GEO. CLINTON."

New York, February 15, 1785.

February 28. To the Senate: Governor Clinton transmitted a letter from Governor Dickinson of Pennsylvania with accompanying resolutions adopted by the Legislature of that State relative to the boundary line between the two States. (See note 14.)

March 1. To the Assembly:

Objections by the Council of Revision to a bill "to regulate inoculation for the smallpox in the city and county of Albany and in the counties of Suffolk and Dutchess."

The Council object against the bill becoming a law of this State, as inconsistent with the public good.

[14] This recommendation resulted in chap. 29, passed March 7, 1785, for running out and marking the jurisdiction line between this State and Pennsylvania.

"For, by the first enacting clause, all persons are restrained from making use of any building within the city of Albany for the purpose, unless a license from the Mayor, Alderman and Commonalty, in Common Council convened, be previously obtained; which leaves it in the power of the corporation, nearly, if not totally to stop the practice; for, though by the proviso, at the conclusion of this clause, people are not to be prevented from inoculating their own families, in their own houses, yet it will admit of a doubt, whether a physician may be employed for the purpose, except in his own house.

And by the second enacting clause, no person in the remaining parts of the county of Albany, and in the counties of Suffolk and Dutchess, is to inoculate, or cause any person to be inoculated for the smallpox, but at such place or places, and under such rules and regulations, to prevent the spreading of the disease, as a majority of the justices of the peace, and the supervisors of the several towns, precincts and districts within the said counties, shall respectively, under their hands and seals, make and direct; whereby it may so happen, that should a majority of the justices and the supervisors, of any town, precinct or district, be opposed to the practice of inoculation, from scruples of conscience, or apprehensions of danger, no place would be fixed, nor no regulations made; and thus, one of the most useful discoveries, with which Providence hath favored mankind, for moderating the violence and danger of a contagious and fatal disease, would be rendered, in a great measure, nugatory and useless; for, though recourse may be had to inoculation, when the smallpox breaks out in the natural way, yet it is observed to prove more fatal on such occasions, owing to the air being rendered unwholesome from the great number of persons infected with the disorder, to an unsuitable habit of body in many patients, who are at all events obliged to be inoculated, and sometimes to its happening at an unfavorable season of the

year; whereas if the present practice of inoculating, as it suits with the circumstances and conveniences of the people, be suffered to continue, few evil consequences are to be apprehended, and that otherwise terrible disease is rendered so mild in most cases as to be scarcely infectious.

A recent instance in one of the adjoining towns of a neighboring State, abundantly evinces the justice of these objections."

The bill was not passed over the veto.

March 4. To the Assembly:

Objections by the Council of Revision to a bill "to enable the courts therein mentioned, to issue commissions for the examination of witnesses in certain cases."

"1st. Because, by rendering a remedy, which should never be used but in extraordinary cases, too common, it may in the end, habituate the courts and people to a mode of trial, by affidavits, which is much less perfect than that now in use, in which the witness being brought before the judge and jury, they form their judgment, not only from what is said by him, but from his conduct and manner of saying it.

2d. Because the judge and jurors, as well as the parties, have, by the common law, a right to interrogate the witness, of which advantage this bill would deprive them.

3d. Because, as the whole of the depositions must be read, they will bring many matters before the jurors which are altogether impertinent to the issue, and which in common cases the court, would deem improper testimony to go to a jury; and thus create a bias on the minds of the jurors, and lead them to an illegal decision.

4th. Because, though in causes depending in chancery, where the whole merits appear in the bills and answers, the parties may so frame their interrogatories as to bring out the truth; this would be utterly impossible in many cases at

common law, where the general issue is pleaded, and the special matter given in evidence, so that the parties not seeing each others interrogatories, nor not knowing what each other intend to prove, might be questioning to different points, and this bill rendered the parent of injustice; and that proviso, which leaves a discretionary power in the judge or court to grant or refuse a commission be rendered nugatory, from his not being able to judge what the suit in issue may be.

5th. Because, unless some more care is used in the naming of the commissioners, and in the carriage of the commission, than is to be expected from every judge of every inferior court, great latitude will be given for fraud and forgery.

6th. Because the expense of a commission, in which at least two commissioners must be employed, together with that of the interrogatories, cross interrogatories, depositions, copies, &c. must in many cases tried in the inferior courts, exceed the value of the thing in demand; and this too may be rendered a dead charge to the person applying for the commission, if his opponent refuse to join therein.

7th. Because it is totally unnecessary. The experience of ages in England, and of an hundred years here, having set this seal to the present practice, it is impossible to foresee all the inconveniences and mischiefs that so essential an alteration in the common law, as the one proposed, might produce."

The bill was not passed over the veto.

March 9. To the Assembly:

Objections by the Council of Revision to a bill "incorporating the several tradesmen and mechanics of the city and county of New York."

"1st. Because so far as charity is the object of the bill, it is totally unnecessary, many charitable societies sub-

sisting as well in this city as elsewhere without incorporation, nor can anything justify such incorporation, but some peculiarity in the situation of the persons applying, which renders the ordinary provision for other distressed citizens inadequate to their relief.

2d. Because the contributions necessary to support the charity, the loss of time in the various meetings of the corporation making by-laws, in directing the funds and managing the almshouse, &c. must all operate as so many taxes on the members, and either induce them to use means to keep up the price of labor, or find themselves underwrought by other mechanics, who are willing to rely on the State for the support, to which in case of distress they are by law entitled, without involving themselves in present difficulties to avoid distant evils.

3dly. Because all incorporations imply a privilege given to one order of citizens which others do not enjoy, and are so far destructive of that principle of equal liberty which should subsist in every community; and though respect for ancient rights may have induced the framers of the constitution to tolerate those that then existed, nothing but the most evident public utility can justify a farther extension of them.

4thly. Because, by the sixth enacting clause the by-laws of the corporation are made to depend in some measure upon the will of the mayor, aldermen and commonalty of the city and county of New York, a connection and union of views being thereby rendered necessary, either the mechanics will influence the magistrates, and the extensive powers of the corporation of the city and county of New York be made at some future day instruments of monopoly and oppression, or which is more probable, the corporation of the city and county of New York will obtain a controlling power over the corporation of mechanics, and thus add to the extensive influence which that rich and powerful corporation already enjoy, thereby rendering it extremely

dangerous to the citizens and to the political freedom of the people; an evil much more to be apprehended under the present, than under the former constitution, for the Governor and Senators being now elected either by the State at large or extensive districts in which there will on many occasions be variety of sentiments; it must be obvious that a comparatively small body of citizens, uniting in one general object, may by their weight make the lightest scale preponderate.

5thly. Because the reasons assigned in the preamble of this bill, may equally operate for the incorporation, not only of the mechanics but of every other order of men in every county, whereby the State, instead of being a community of free citizens pursuing the public interest, may become a community of corporations, influenced by partial views, and perhaps in a little time, (under the direction of artful men) composing an aristocracy destructive to the constitution and independency of the State.

6thly. Because, though the title of the bill professes to incorporate the tradesmen and mechanics of the city and county of New York, it does not in fact incorporate any but the forty-three persons named in the bill; and invests them with a discretionary power either to incorporate, or not incorporate the mechanics of the city and county of New York; a power by no means to be entrusted to any but the representative body of the people; and by a singular solecism in politics, instead of directing that the mechanics at large choose their trustees, they direct that the trustees or members of the corporation shall renew themselves out of the community at large; thus providing only for the extent and perpetuity of their own power. The 12th clause directing, 'that they elect and choose, in such manner and from and upon such terms and conditions as shall be ordained for that purpose, by any of the said by-laws or ordinances of the said corporation, such and so many persons to be members of the said corporation, as they shall think

beneficial to the laudable designs of the said corporation.' By this clause the forty-three persons named in the bill, may at pleasure confine the corporation to its present number, or increase or diminish it from twenty-five members to twenty-five thousand; nor are they by any part of the bill confined to elect out of the mechanics of the city and county of New York, but may extend this incorporation to all the mechanics of this or any other State. By this clause too, they are unrestrained in the imposition of the terms upon which other mechanics are to be admitted. If the law will be attended with inconveniences to the mechanics that compose the corporation, it should be rejected on that ground; nor should so useful a body of men be permitted to injure themselves. If on the contrary, it holds out advantages to them, their admission into the corporation should not depend on the will of forty-three mechanics; but should extend without restriction to all other mechanics that now do, or may hereafter exercise their trades within this city and county; and the Legislature should prescribe the terms of their admission without leaving a door open for the rich and more powerful to oppress or govern those who are less opulent.

7thly. Because the forty-three persons named in the bill and their successors, are not only empowered to elect members for the said corporation, but to make by-laws, and judging upon those laws to expel their members for the infraction thereof, so that by an improper use of two powers, that should never be united, the legislative and judicial, they may acquire and establish an unbounded control over the other mechanics of the city and county.

8thly. Because, by the 7th clause they are not only empowered to make by-laws for certain definite purposes, but ' for regulating all other their affairs and business, as they or the major part of them so met, shall judge best for the general good of the said corporation, and for the more effectual promoting the beneficial designs of the institution;

and the same to alter, amend and repeal, from time to time as they shall conceive most conducive to the interests of the said corporation, and the promoting the public good, &c. so as the same by-laws be reasonable in themselves, and not repugnant to the constitution or laws of this State, or of the laws and ordinances of the Mayor, Aldermen, &c.' The first of these restrictions is too vague to amount to anything; many measures may be reasonable, that under particular circumstances, are highly inexpedient, so that the objects of the by-laws of this corporation are entirely indefinite; and as it would seem extend to the promotion of the public good, an extent which includes all the powers of legislation, provided they do not contravene the laws and constitution of the State, and of the mayor, aldermen, &c. And this construction is more fully justified by the last clause of the law, which restrains them from limiting the price of labor; thereby evincing that the Legislature conceived that without such restraint, the by-laws of the corporation would have extended to that object, and of course does, in its present form, extend to an infinity of others, which may be equally injurious to the community.

9thly. Because the interests of the State require that every encouragement should be given to industrious emigrants; no stranger who may choose to reside among us, should therefore, besides the unnecessary and useless expense of taking up his freedom, be compelled to struggle against a combination vested with corporate powers, and interested in keeping him unemployed.

10thly. Because the bill authorizes the corporation to hold estates to an unlimited amount, confining them (if that can be called confining) to fifteen hundred pounds a year, beyond outgoings and reprisals.

11thly. Because no provision is made to direct the purposes to which this unbounded income is to be applied, to prevent the fraudulent or improper uses of it, and to render the corporation accountable for the expenditure, or sub-

ject to any inspection, which has been hitherto customary in every eleemosynary corporation, either the founder or ordinary having the right of visitation; whereas no ordinary exists under the present constitution.

12thly. Because experience having hitherto pointed out no inconvenience, in leaving the mechanics on the same footing with the other members of the community, the bill holds forth no object sufficiently important to induce the change of a system, under which they have happily prospered for a series of years, in favor of one that presents many apparent inconveniences, and which, in its operation, may be more extensively mischievous than human prudence can at present foresee."

The bill was not passed over the veto.

March 9. To the Assembly:

Objections by the Council of Revision to a bill for the "indemnification of the Commissioners of Sequestration and the Commissioners of Forfeitures, and the lessees under them, and for other purposes therein mentioned." [15]

"1st. Because the first clause of the bill enacts, that the late Commissioners of Sequestration, in the several counties of this State, shall be, and are hereby declared to be indemnified for all and every lease and leases, made or given by them for lands and tenements, the property of persons who during the late war have gone over to, remained with or joined the enemy; and that no suit or suits, already brought shall be maintained or hereafter commenced against the said commissioners of sequestration, or against any person or persons holding under them, by any person or persons claiming property in or to such lands or tenements.

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[15] This bill, for the indemnification of commissioners of sequestration and forfeitures, was passed over the veto, and became a law, chap. 33, on the 14th of March, 1785.

If the commissioners have pursued their powers, such indemnification is unnecessary; if they have exceeded or violated them, the subject is as much entitled to his damages as to any other part of his property, nor can it be consistent with the spirit of a free constitution, by law and without trial to deprive them of it;[b] though perhaps the Legislature may conceive it just to compensate the Commissioner out of the Treasury of the State, where it shall appear on trial, that by any extraordinary and well meant exertion, he has rendered services to the community, and in consequence thereof damages have been recovered against him.

2dly. Because, if land should be claimed by persons not holding under those who have gone to the enemy, but by a different title, or if the commissioners have exceeded their powers in giving long leases, the persons entitled to the possession are by this law precluded from the legal means of recovering their rights.

3dly. Because, as the State can do no wrong, unless suits against their officers are rather encouraged than checked, the subject will in many instances suffer injustice, neglecting the legal means to do himself justice, lest by an ex post facto law he should find his attempts frustrated, and his damages increased by the cost and expense he has been at; by which means persons clothed with public authority, whose conduct should most narrowly be watched, will be tempted to commit acts of violence and oppression."

March 10. To the Assembly:

Objections by the Council of Revision to a bill to "prevent delay in the collection of taxes, and for giving relief in certain cases."

"1st. Because the first clause of the bill prohibits the issuing of injunctions in case of actions brought by col-

[b] Const. 1777, § 13. See also 1894, Art. 1, § 6.

lectors; the tax law referred to, having vested more extensive powers in the hands of assessors than is usual in free governments, and subjected to their disposition the property of citizens of this State, almost without control; and subsequent laws having in like manner subjected the personal liberty as well as the property of the people of this State, to them and the collectors, it does not appear for the public good, or consistent with the spirit of the constitution, that they should be freed from every species of restraint in the execution of such dangerous powers. The law which prohibits the issuing of certioraris in cases of this nature, having left the party that may be injured without remedy, at common law; tho' he should not have been an object of the tax law; tho' he should have paid his tax; tho' the justice of the peace who tried the cause should have refused him a jury, to which by the law and constitution he is entitled; tho' he should have admitted illegal testimony, or rejected what he was bound to admit, or in any other way discovered the most flagrant partiality and ignorance, the party if unable to pay the tax must stand committed without limitation of time, unless relieved in a court of equity; because to take this also from persons who may conceive themselves aggrieved by the operation of these laws, is to deprive them of the benefit of the law, the inherent British right of every free subject, and to establish a maxim which the most arbitrary governments will not avow, that a right may exist without a remedy.[c]

2dly. Because the second clause of this bill gives a power to the supervisors in the counties, and the mayor, aldermen and commonalty in the city and county of New York, to hear and determine the claims of the persons who require restitution, after having been unjustly rated; and thereby erects a number of new courts, not proceeding according to the course of the common law, in direct violation of the constitution of this State.[d]

[c] Const. 1777, §§ 13, 41.
[d] Const. 1777, § 41.

Lastly, Because, though it is grounded upon a presumption that injustice may be done to the party applying for relief, yet it gives no adequate relief to one whose property may have been unjustly taken from him, and sold at half its value, or to those who may with equal injustice have suffered imprisonment under the tax laws nor does it even provide any means by which they may be discharged from such imprisonment."

The bill was not passed over the veto.

March 12. To the Assembly:

Objections by the Council of Revision to a bill "to explain and amend an act entitled 'An Act imposing duties on certain goods, wares and merchandise, imported into this State,' passed 18th November, 1784."[16]

"Because every attempt to regulate trade by one State, without the concurrence of others, will produce injury to such State, without effecting any general good.

2d. Because partial burdens imposed on the trade of a foreign power by any particular State, may produce partial restraints on their part upon the trade of such State. Should this be the effect of the bill under consideration, the commerce of this State may be irretrievably ruined, before any remedy can be applied.

Lastly, because the United States having appointed ministers to form a treaty of commerce with Great Britain, this bill may probably obstruct the treaty, or contravene such articles as they shall have agreed upon, and the law in its operation be construed into an infraction of the treaty before an opportunity can be offered to the Legislature to repeal the same."

[16] This bill, explaining the importation act of 1784, was passed over the veto, and became a law, chap. 34, on the 15th of March, 1785.

March 18. To the Assembly:

"GENTLEMEN.—You will receive with this message a letter of the 15th inst. from the Honorable John Jay, Esquire, notifying his acceptance of the office of Secretary of the United States, for the department of foreign affairs, whereby his seat in Congress, as a delegate of this State, has become vacant.

GEO. CLINTON."

New York, 18th March, 1785.

March 23. To the Senate:

Objections by the Council of Revision to a bill "for the gradual abolition of slavery within this State."

"1st. Because the last clause of the bill, enacts, that no negro, mulatto or mustee, shall have a legal vote in any case whatsoever, which implicatively excludes persons of this description from all share in the Legislature, and from those offices, in which a vote may be necessary, as well from the important privilege of electing those by whom they are to be governed; the bill having in other instances, placed the children that shall be born of slaves in the rank of citizens, agreeable both to the spirit and letter of the constitution, they are as such entitled to all the privileges of citizens; nor can they be deprived of these essential rights, without shocking those principles of equal liberty, which every page in that constitution labors to enforce.[e]

2dly. Because it holds up a doctrine, which is repugnant to the principle on which the United States justify their separation from Great Britain, and either enacts what is wrong, or supposes that those may rightfully be charged with the burdens of government, who have no representative share in imposing them.

3dly. Because this class of disfranchised and discontented citizens, who at some future period, may be both

[e] Const. 1777, § 13.

numerous and wealthy, may under the direction of ambitious and factious leaders become dangerous to the State, and effect the ruin of a constitution whose benefits they are not permitted to enjoy.

4thly. Because the creation of an order of citizens, who are to have no legislative or representative share in the government, necessarily lays the foundation of an aristocracy of the most dangerous and malignant kind, rendering power permanent and hereditary in the hands of those persons who deduce their origin through white ancestors only, tho' these at some future period, should not amount to a fiftieth part of the people. That this is not a chimerical supposition, will be apparent to those who reflect that the term mustee, is indefinite; that the desire of power will induce those who possess it, to exclude competitors, by extending it as far as possible; that supposing it to extend to the seventeenth generation, every man will have the blood of many more than 200,000 ancestors running in his veins, and that if any of these should have been colored, his posterity will by the operation of this law be disfranchised. So that if only one thousandth part of the black inhabitants now in the State, should intermarry with the white their posterity will amount to so many millions, that it will be difficult to suppose a fiftieth part of the people born within this State two hundred years hence, who may be entitled to share in the benefits which our excellent constitution intended to secure to every free inhabitant of the State.

5thly. Because the last clause of the bill being general, deprives those black, mulatto and mustee citizens, who have heretofore been entitled to vote, of this essential privilege, and under the idea of political expediency, without their having been charged with any offence, disfranchises them in direct violation of the established rules of justice, and against the letter and spirit of the constitution, and tends to support a doctrine which is inconsistent with the most

obvious principles of government, that the Legislature may arbitrarily dispose of the dearest rights of their constituents.'"[f]

The bill was not passed over the veto; but see as to sale and manumission of slaves, chapter 68, passed April 12, 1785.

March 25. To the Senate:

"GENTLEMEN.—You will herewith receive a letter from the Commissioners of the Western District, stating their transactions, and enclosing a report of the sales by them made; an account of the expenditures of the Commissioners of Indian Affairs, accompanied with vouchers; and also a letter from Colonel Willet, requesting that measures may be adopted for the settlement of the accounts which accrued in subsisting the troops lately under his command on the frontiers of this State.[17]

GEO. CLINTON."

New York, 25th March, 1785.

March 31. To the Senate:

Objections by the Council of Revision to a bill "to remove doubts respecting an act entitled 'An Act to abolish entails, to confirm conveyances by tenants in tail, to distribute estates real of intestates, to remedy defective conveyances to joint tenants, and directing the mode of such conveyances in future,' passed 12th July, 1782."

"1st. Because among other things it enacts, that where any lands, tenements or hereditaments have at any time heretofore been, or hereafter shall be devised, granted or otherwise conveyed, to any person or persons for life, to take effect after the determination of another estate for

[f] Const. 1777, § 13.

[17] The Senate committee, which had this matter under consideration, presented a report expressing the opinion that Col. Willett should render to the State Auditor a verified account of his transactions.

life, by means of a devise or conveyance to trustees, to preserve contingent remainders or otherwise, the person or persons to whom the estate for life has been or shall be first, as aforesaid, given, devised or granted, shall, if living, be seized of such lands, tenements and hereditaments, in fee simple, otherwise the person or persons in full life, who by virtue of such devise, grant or conveyance, is or are intended next to succeed to an estate for life, in such lands, tenements and hereditaments shall be seized of the same in fee simple.

Which restriction must upon many occasions be extremely inconvenient, where the peculiar situation of a family may require a particular provision, that in most cases can only be made by means of trustees to preserve contingent remainders, and because no evil is to be apprehended from this source, as the law has provided against the creation of perpetuities by this means, if estates tail are destroyed.

2dly. Because, the above clause of the law retrospects, and of course may defeat the reversions and remainders, to which by law many persons are now entitled, and contrary to the intention of the devisor, and perhaps to the ruin of his family may give a fee simple estate to a widow by a second marriage, or a profligate child for whom he only intended to provide for life."

The bill was not passed over the veto.

April 4. To the Assembly:

Objections by the Council of Revision to a bill "to enable persons to discharge debts due to this State for monies loaned while this State was a Colony." [18]

"The Council object to the said bill as inconsistent with the public good.

[18] This bill, relative to certain debts due to the late colony of New York, was passed over the veto, and became a law, chap. 60, on the 7th of April, 1785.

Because the said bill authorizes the loan officers, or the persons who have acted as loan officers to pay to the treasurer of this State, the monies they have received in the same species of money received by them, without particularly directing such receipts to be of monies due to the Loan Office; and though it is just and right that the public should receive from its servants such monies as they have received from the public, and if such monies have depreciated in their hands, the public should sustain the loss; yet if such officer has at any time appropriated such monies to his own use, he ought to account for the value of it at the time it was so appropriated; for, from the great depreciation of our paper money, during the war, this bill puts it in the power of the loan officer to discharge himself from the public, with a much less sum than he received, whereby the public sustains a certain loss. If a Loan Officer in 1776 received £1000 in continental money, and laid out the money in the year 1777, before any depreciation had taken place; and pursuant to this bill he procures at this day one thousand pounds, continental money, at one hundred and forty for one, by this means he pays a debt of £1000 to the public, with about seven pounds three shillings; and if any advantage has arisen from the use of the money the loan officer will receive it, and the public must be set down with the greatest possible loss by the depreciation, which is nine hundred and ninety-two pounds, seventeen shillings out of the thousand, which difference goes to the advantage and reward of the loan officer for not doing his duty."

April 5. To the Assembly:

"GENTLEMEN.—I have the honor to lay before you a resolution of the United States in Congress, of the 28th instant, referring to the Legislature, the claim of the merchants of the city of New York, as set forth in their memorial, (a copy of which accompanies this message) and

recommending, that such provision be made for them as the Legislature may judge proper, in consideration of their merits.[19]

GEO. CLINTON."

New York, March 30, 1785.

April 5. To the Assembly:

Objections by the Council of Revision to a bill "to appoint the place of holding the supreme court of judicature of this State in future, and to prolong the terms thereof, and for other purposes therein mentioned."[20]

"1st. Because the bill supposes a person may commence a suit in the Supreme Court for a debt of one hundred pounds, or under, with no other inconvenience or loss than that of being obliged to accept of such costs only, as he would have been entitled to, had he commenced his suit in an inferior Court; whereas the bill is so worded that any plaintiff who shall commence a suit in the Supreme Court where the sum in demand does not exceed one hundred pounds, will forfeit the sum of Twenty Pounds, by virtue of the act in the said bill mentioned.

2dly. Because, a great number of actions which must be brought in the Inferior Courts, should this bill pass into a law, will be removed into Chancery, for no other cause than that the witnesses who are to give testimony in them, reside without the jurisdiction of the Court; in which cases the party wanting the testimony, must bring his certiorari bill in Chancery, whereby great costs will be created, and

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[19] Concurrent resolutions were adopted reciting the nature and merits of the claims presented by the merchants, and the inability of Congress to afford relief; and recommending that in view of the early adjournment of the Legislature, the creditors of the merchants be requested to forbear commencing suits against them for debts contracted previous to the 9th day of July, 1776, until the next meeting of the Legislature.

[20] This bill, relative to terms of the Supreme Court, was passed over the veto, and became a law, chap. 61, on the 7th of April, 1785.

suits delayed to the great injury of the parties, and against the public good.

3dly. Because, by the constitution of this State, the Judges of the Supreme Court are vested with the sole power of appointing the clerks of the said court; and should this bill pass into a law, the clerk for the time being of the said Supreme Court will be authorized and required to appoint a deputy clerk of the said court, who shall keep his office in the city of Albany, which deputy clerk may be so appointed not only without the consent but against the approbation of the said judges, in direct violation of the constitution of this State."[g]

April 6. To the Senate:

Objections by the Council of Revision to a bill to "incorporate the German Society for encouraging emigration from Germany, relieving the distresses of emigrants, and promoting useful knowledge among their countrymen in this State."

"1st. Because however useful and laudable it may be in the State, by their acts to encourage foreigners to settle upon our waste lands, to relieve the distresses of the unfortunate, and diffuse knowledge among the ignorant; yet it will be productive of the most fatal evils to the State, to introduce into it a great number of foreigners, differing from the old citizens in language and manners, ignorant of our constitution, and totally unacquainted with the principles of civil liberty, under such circumstances as will naturally tend to keep them a distinct people, and prevent their blending with the general mass of citizens, with one common name and interest.

2dly. Because it will establish a precedent, under which the emigrants from every nation in Europe, Asia and Africa, who incline to seek an asylum in this State, from the oppression and tyranny, which too generally prevail in

[g] Const. 1777, § 27.

the old world, to claim similar establishments, each of which will be under the influence and direction of those, who govern the measures of the respective corporations; as to those they must look for protection and charitable relief upon their arrival, and for instruction after their settlement.

3dly. Because the establishment of a corporation, six-seventh parts of the governors whereof, are to be resident in the city of New York, and who must eventually, from the very nature of the institution, have great influence over a large number of freeholders and electors in the State, may be attended with very pernicious consequences, should the supposed interest of this city at some future period interfere with that of other parts of the State.

4thly. Because, though great care is taken in the provisions of the bill, that the revenues of the corporation should never exceed 1500 pounds per annum, over and above all incumbrances and reprises; yet it will not be very difficult so to contrive the incumbrances, that the corporation may have the actual disposal of fifteen thousand pounds, or any greater sum a year, without endangering their charter."

The bill was not passed over the veto.

April 7. To the Assembly:

"GENTLEMEN.—You will herewith receive an affidavit of Henry I. Van Rensselaer, taken before Mr. Justice Yates; the violences therein stated, having been committed under such circumstances as to render the interposition of the courts of justice impracticable, was, I presume, the reason of its being transmitted to me; and it is under this impression that I now communicate it to the Legislature.

GEO. CLINTON."

New York, April 7, 1785.

April 11. To the Assembly:

Objections by the Council of Revision to a bill "to cure certain defects in deeds and conveyances of real estate."

"Because, being retrospective, and not confined to such deeds only as have been accompanied by possession, it will tend to revive dormant claims, defeat bona fide sales, and encourage litigation, as will be apparent to those whose profession must have given them frequent opportunities of seeing the number of deeds of this nature that now exist, without conveying any right."

The bill was not passed over the veto.

April 15. To the Senate:

"GENTLEMEN.—By this message I have the honor of submitting to your consideration, resolutions of the United States in Congress, of the 1st, 7th, and 12th instant, relative to the raising a body of troops in the States therein mentioned, for the protection of the northwestern frontiers, the defence of the inhabitants against the depredations of the Indians, for preventing unwarrantable intrusions on lands belonging to the United States, and to guard the public stores;[21] and also of laying before you for your information an ordinance of the 31st of March, for the regulation of the office of the Secretary of Congress.

GEO. CLINTON."

New York, 14th April, 1785.

April 20.—The Assembly received a letter from Hector St. John, Consul of France, to Governor Clinton, and an application from the said Consul to the Speaker of this House, to be laid before the Legislature, with a letter to the said Consul, from several of the subjects of his Most Christian Majesty, residing in this State.[22]

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21 Chap. 82, passed April 22, 1785, for raising certain troops, was the Legislature's answer to this recommendation.

22 It seems from concurrent resolutions adopted by the Legislature that an "insolent, premeditated, and unprovoked indignity had been offered to

April 21. To the Senate:

Objections by the Council of Revision to a bill "for incorporating the inhabitants residing within the limits therein mentioned." [23]

"1st. Generally, because the increase of corporations with extensive powers, is destructive of equal liberty, tending to the subversion of the constitution and government of the State.

2dly. Particularly, because by the said bill the mayor, recorder, aldermen and assistants of the said city of Hudson are authorized to make by-laws, for the regulation of the internal police of the said city, and thereby to ordain, limit and provide such pains, punishments and penalties, fines and amerciaments, upon, towards, and against all and every person that shall offend against such by-laws; which pains and punishments are to be inflicted by the judgment and order of the said mayor, recorder and aldermen; and the said penalties, fines and amerciaments are to be sued for and recovered before them, and for the use and advantage of the said mayor, recorder and aldermen, thus blending the legislative, the executive and the judicial departments in one, which must in its consequences be destructive of the rights and liberties of the citizens of the State, residing within the limits of the said city.

3dly. Because, by the said bill, the aldermen of the said city, who are elective by the people thereof, are made judges

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the flag, and several of the officers of his Most Christian Majesty, by sundry British seamen and others." The resolutions declared that the late riot was a "daring and premeditated insult to the laws and government of this State," that the perpetrators of the riot ought to be punished in an exemplary manner, and the Governor was authorized to offer a reward of $120 for the arrest of the instigator of the riot, and $25 for the arrest of each other person aiding or abetting therein. The resolutions also provided that the Governor "make such disposition of the ships and vessels of different nations, which now are, or hereafter may be in the harbor or port of New York, as he may conceive best calculated to preserve good order and prevent similar disturbances and animosities in future."

[23] This bill, incorporating the city of Hudson, was passed over the veto, and became a law, chap. 83, on the 22d of April, 1785.

of the Mayor's Court within the said city, thereby counteracting the constitution of this State, which ordains, that all officers, who were not theretofore elective, should be appointed by the Governor, with the advice and consent of the Council of Appointment, and thus subjecting the decision of the property of some of the citizens to judges elected by others in which they can have no agency.'"[h]

April 21. To the Senate:

Objections by the Council of Revision to a bill "to enable the mayor, aldermen and commonalty of the city of New York, in Common Council convened, to order the raising of monies by tax for the maintenance of the poor, and other contingent expenses arising in the said city." [24]

"1st. Because it would be inconsistent with public good, to authorize the corporation to tax the citizens, in order to raise monies for the very purposes for which, it is to be presumed, the large estates they are allowed to hold, was intended to provide, unless they show, to the satisfaction of the Legislature, that the increasing revenue, arising from the public slips, docks and markets, and the rent of corporation lands prove insufficient for the purpose.

2dly. Because, though it may not appear improper to afford occasional assistance to such incorporations to repair the damages brought about by war and other unforeseen calamities, yet it may be attended with consequences of a most alarming nature to the State, if the different corporations (which are to most purposes independent republics) should be enabled to levy large sums annually from the inhabitants, within their respective jurisdictions, especially while they possess the uncontrollable power of appropriating and expending such monies as they may think proper; for though the purposes to which the monies

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[h] Const. 1777, § 23.

[24] This bill, providing for the support of the poor in New York, was passed over the veto, and became a law, chap. 84, on the 22d of April, 1785.

are to be applied, may be mentioned in the law, yet as the present members of the corporation are accountable, if at all, only to their successors, and they again to theirs, it is scarcely possible, in the nature of things, that it should ever be known, whether the whole, or what part of the monies shall have been expended, according to the intention of the Legislature.

3dly. Because as the Commissioners of oyer and terminer and general jail delivery, for the city and county of New York, expired on the third day of January last, by reason of the non-attendance of such commissioners, as were members of the corporation, whereby a number of criminals have been detained in prison, who would otherwise have been punished or discharged; it would be unjust to levy a tax upon the citizens at large for the support of those prisoners, which is one of the purposes mentioned in the bill, and which would operate as a fine upon the citizens, for the negligence of the magistrates."

April 21. To the Assembly:

Objections by the Council of Revision to a bill "to vest the estate of William R. Van Cortlandt in trustees for the payment of his debts and other purposes." [25]

"Because the fact as to the insanity of the said William R. Van Cortlandt ought not to depend on the mere suggestion of his wife and creditors, as stated in the preamble to the bill, but should be solemnly ascertained under the usual commission out of chancery, to justify the passing of a law divesting him of his property; and

Because by the said bill trustees therein named are directed first to pay and discharge all mortgages due on the said estate of the said William R. Van Cortlandt, secondly to pay and satisfy all judgments that may be

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[25] This bill, relative to the estate of William R. Van Cortlandt, was passed over the veto, and became a law, chap. 85, on the 22d of April, 1785.

docketed against the said William R. Van Cortlandt, thereby giving an undue preference to mortgages where there may be prior judgments, whereas by law they are entitled to such preference according to priority."

April 22. To the Assembly:

Objections by the Council of Revision to a bill "for the relief of William Gilchrist."

"Although the case of the said William Gilchrist may be extremely hard, and it might be proper to direct the suit in the bill mentioned to be carried on at the expense of the public (under whom he claims by deed of warrantee) or in forma pauperis, yet it cannot justify so extraordinary a remedy as the bill provides.

Because, by the bill a decision is given in a case depending in the ordinary courts of justice, whereby judicial powers are exercised by the Legislature, and the subject, contrary to the letter and spirit of the constitution, deprived of one of the dearest rights secured to him, a trial by jury[1] and thus by subverting the known and established course of law to meet a particular case for the ease of an individual, the barriers built up by the wisdom of ages for the security of property, would, with the confidence of the people in the justice of government, be destroyed."

The bill was not passed over the veto.

April 27. To the Assembly:

Objections by the Council of Revision to a bill "for the payment of the salaries of the several officers of government, and for other purposes therein mentioned."[26]

"1st. Because it is obviously inconsistent with the public good, that the allowance to the representatives of the people

[1] Const. 1777, § 41.

[26] The salaries bill was passed over the veto, and became a law, chap. 90, on the 27th of April, 1785.

for their services, should continue to be the subject of partial provision, at every new meeting of the Legislature. This practice being a manifest deviation as well from ancient established custom, as an existing law of the State, could only be justified by the particular circumstances which attended the late war, and ought to have ceased with it, and given place to a permanent regulation.

2dly. Because in the preamble to the eighteenth enacting clause, it is suggested, that Rosina Rush has recovered a judgment or judgments in the Supreme Court of this State against Garret Ackerson, Isaac Coe and John De Ronde, for taking and delivering a number of cattle to the Commissioners of Sequestration, in the county of Orange; which cattle were forfeited to the people of this State by the conviction of John Rush, husband of the said Rosina Rush; and that sufficient reasons have been assigned to the Legislature to relieve the said Garret Ackerson, Isaac Coe, and John De Ronde, from the said judgment or judgments, whereupon the said judgment or judgments are declared to be vacated and of no effect, which is such an assumption of judicial power by the Legislature, as renders the property of the citizens of this State totally insecure, and is subversive of the fundamental principles on which all free constitutions are built. The constitution and laws of this State have wisely provided, that in all questions of property the matters of fact shall be found by a jury, who are sworn to determine, according to evidence, which must be delivered on oath; and that the law arising from such facts shall be declared by the judges, who are under equally solemn obligations to decide, according to the known laws of the land, thereby affording the highest possible security to the subject; whereas the members of the Legislature are under no such obligations in determining either upon the law or the fact.[1] Besides, unless the defendants have suffered judgment to go against them from inattention to

[1] Const. 1777, §§ 13, 41.

their interest, or a consciousness of their inability to justify their conduct, the ordinary course of practice will give them ample relief, either upon motion for a new trial or a writ of error.

3dly. Because it is inconsistent with the public good, thus to put into a bill, providing for the payment of the public creditors, and which, it might be presumed, their necessities would induce the Legislature to pass, notwithstanding any objections, a matter totally unconnected with the general subject of it, and tending, if drawn into precedent, to establish a mode of government, absolutely inconsistent with the faintest idea of civil liberty."

April 27. The Legislature adjourned to meet at a time and place to be designated by the Governor.

1786. JANUARY. LEGISLATURE, NINTH SESSION.

GEORGE CLINTON, Governor.

Governor Clinton, on the 16th day of November, 1785, issued a proclamation convening the Legislature in New York on the 6th of January, 1786, but a quorum did not appear in both Houses until the 16th, at which time the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—The nature of the adjournment of the Legislature at their last session, obliged me to convene you by "proclamation." This is a power which cannot, consistently with the constitution, be exercised but on "extraordinary occasions," and although the various subjects which call for your attention are highly interesting, it may be doubted whether they fall under the description referred to by the constitution.[a]

[a] Const. 1777, § 18.

Thus I have been reduced to the necessity of exercising an authority, in itself questionable, to give the Legislature an opportunity of "meeting at least once in every year for the dispatch of business," as the constitution expressly directs.* Permit me, therefore, to suggest the propriety of a provision for holding your annual and ordinary sessions in future, so as to prevent the interference of the executive in a right evidently vested in the Senate and Assembly.[1] In fixing on this season for your meeting, I was governed, as well by a regard to your personal convenience, as to the public interest, being led to believe it would least interfere with your private engagements, and that it might probably prevent the trouble and expense of a second meeting; with respect to the place, I should have deemed myself reprehensible if I had assembled you at any other than the repository of your public records and archives, to which in the course of your deliberations, there must be frequent occasion to recur.

GENTLEMEN.—It affords me the most sensible pleasure to observe that nothing hath happened since the close of the last session to disturb the public tranquillity; that good order, obedience to the laws, and the due administration of justice have generally prevailed; that the different districts of the state by the industry of the citizens are rapidly recovering from the waste and desolation of war; and that the toils of the husbandman have been amply rewarded by a fruitful season and a plentiful harvest. For these, among other distinguished blessings, unfeigned gratitude is due to our bountiful Creator. It must, however, excite disagreeable

* Const. 1777, § 2.

1 Future meetings of the Legislature were regulated by chap. 14, passed March 13, 1786. The act required the Legislature to meet annually on the first Tuesday of January, unless the Governor should by proclamation convene it at an earlier date. The Legislature might upon adjournment fix the place of its meeting, but if the place was not so fixed, the Legislature was to convene at the place where the last meeting was held.

reflections when I inform you that the British government, in manifest violation of the treaty, continues to retain, by an armed force, the different posts in the northern and western frontier of this state, and thereby in an essential degree cramps our commerce and obstructs the progress of our settlements; although it is my duty to mention this circumstance to you, I am sensible it is in our federal capacity that a remedy must be provided for an aggression so detrimental to our prosperity.

GENTLEMEN.—After the annual appointments to be made by the Senate and Assembly, the requisitions of the United States in Congress assembled, contained in their acts of the 27th of September, and 12th of October last, demand your first attention.[2] To assist you in your deliberations on these important subjects, I refer you to the letters from the commissioners of the treasury board, with their returns and estimates explanatory of the principles on which these requisitions are founded. Relying on your zeal for the federal interest, I have the fullest confidence that every measure calculated to support our national credit, and warranted by the confederation, will meet your cheerful concurrence. When we reflect that under divine Providence, it is to the early and steady exertions of the public creditors, by their loans, their labors, and their military services, that we are indebted for our liberty and independence; it is greatly to be regretted that the peculiar circumstances of the state have hitherto prevented the adoption of more effectual measures for their relief. Our resources, if equally and judiciously drawn forth, and economically applied, will, I trust, be found competent; and as the impediments which stood in the way of this necessary business are now in a great measure removed by the return of peace,

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[2] These acts of Congress relative to certain claims against the State, were acceded to by chap. 48, passed April 28, 1786.

and the arrangements which have since taken place, a regard to justice, as well as the consideration of its being essential to public credit in future, that past engagements be faithfully fulfilled, will I am persuaded, prevent a farther delay. To enable you to engage in this important service with the greater prospect of success, I shall cause to be laid before you, estimates, as well of the amount of the debts due from the public to the citizens of this state, as of the means that may be applied towards discharging them without the aid of burthensome taxes.

While we are pursuing agriculture, as our first object, commerce and manufactures also deserve our attention. To the one, the husbandman is indebted for the generous prices he now receives for his produce, and by the other, our wants from abroad may be diminished. These considerations alone are sufficient to recommend them to your notice.

The great consumption of the productions of India, and the advanced prices at which we were supplied by other nations, renders an immediate intercourse with that country a desirable object. I therefore submit to the wisdom of the Legislature, whether the laudable and enterprising spirit of our merchants, adventuring in that commerce, ought not to meet with particular encouragement, and some legislative provision be made to prevent the waste and preserve the credit and reputation of an article, the produce of this state, peculiarly advantageous as a remittance to that country.

The dangers which we so lately experienced by a dependence on foreign supplies of iron and gun powder, ought to awaken our prudence and put us on our guard against events however distant and unforeseen. Our country abounds with materials for carrying on these manufactures to the utmost extent, and we must discover a want of policy

and vigilance highly inexcusable, if we neglect obvious advantages which providence hath so kindly placed within our reach.[3]

GENTLEMEN.— Several matters heretofore submitted to the consideration of the legislature, remain unfinished; among these, the organization of the militia,[4] the establishment of magazines, and a provision for holding elections, are objects highly important in themselves, and it is my duty to add, that they are expressly enjoined upon the legislature by the constitution. A bill originated last session for a revision and digest of our laws, but for want of time it was not enacted; this appears to be a measure of too much magnitude not to be resumed; for, besides their obscurity, arising from the circumstance of the revolution, it is highly unbecoming that we should be obliged to search through the mass of British statutes for such as extend to us by the constitution.* I am sensible that a correct and judicious digest of our written laws will be an arduous task, but when the dignity of our government, and the ease and security of the people require it, no reasonable pains or expense ought to be spared for its speedy accomplishment.[5]

GENTLEMEN.—Without enlarging at this time, I shall now deliver to you the different acts of congress, and other papers necessary for your information, reserving whatever else may appear to merit your attention to be communicated in the course of the session, by message, and conclude with only adding that as the security of property forms one of

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[3] An act, chap. 51, to promote the manufacture of iron, was passed on the 28th of April, 1786.

[4] A militia law, chap. 25, was passed April 4, 1786.

[5] By chap. 35, passed April 15, 1786, Samuel Jones and Richard Varick were appointed commissioners to collect and report to the Legislature colonial laws in force on the 19th of April, 1775, and also to revise and digest laws passed by the State Legislature since the Revolution. The Commissioners were allowed two years to do the work, and their compensation was fixed at four hundred pounds a year.

* Const. 1777, § 35.

the strongest bonds of society, too much care cannot be taken to preserve and strengthen it, by a scrupulous adherence to the principles and spirit of our excellent constitution, and by guarding against an increase of our laws by provisions for partial purposes.

GEO. CLINTON."

New York, January 16, 1786.

SPECIAL MESSAGES.

January 20. To the Senate: Acknowledging its answer to his opening speech.

January 24. To the Assembly: Acknowledging its address.

February 9. To the Senate: Transmitting a report of the Commissioners of Forfeitures of the Middle District, a letter from the Surveyor General, stating certain embarrassments which have impeded him in the execution of the duties of his office, and also a memorial of Abijah Merril and others to the Commissioners of the Land Office, with the certificates and papers therein referred to.[6]

February 17. To the Assembly: Transmitting a letter from the Secretary of Congress of the 15th instant, with the resolutions and schedules therein mentioned.

February 24. To the Assembly: Transmitting a copy of certain resolutions from the State of Virginia of the 13th of January.

February 27. To the Senate:

"GENTLEMEN.—With this message you will receive, for the information of the Legislature, a statement of the contingent expenditures of the United States, from the first of

[6] The Senate committee which considered this message reported that it would be "improper for the Legislature to make a discrimination in favor of any particular set of citizens in the distribution of public property to the injury of other citizens," and, therefore, that the prayer of the petitioners could not be granted.

January to the 31st of December, 1785, with the letter from the Treasury Board of the 22d instant accompanying the same.

GEO. CLINTON."

New York, 27th February, 1786.

February 27. To the Assembly:

Objections by the Council of Revision to a bill "for settling intestates' estates, proving wills, and granting administrations."

"1st. Because the eleventh and twelfth clauses erect a new Court not proceeding according to the course of the common law,[b] and invest the judge of probate with all the powers and authority which have heretofore been exercised in matters testamentary, by the ecclesiastical courts in the Kingdom of England, extending his power even to imprisonment of the subject. The judge of probates has hitherto exercised no other authority, than that of determining upon the propriety of granting probates and letters of administration.

2dly. Because such new court is unnecessary, the courts now organized and known to the constitution having ample powers to make decrees in similar cases, and to carry the same into effect.

3dly. Because while it extends the duty of the judge of probates, it deprives him of the greater part of the emoluments of his office, so that it is highly improbable that any person of sufficient integrity, ability and knowledge of the law, will in future be found to exercise the same, unless the Legislature shall annex a salary to the office, and thereby unnecessarily increase the expenses of government.

4thly. Because it divides the probate office into eleven parts — ten of which are incompetent to decide in disputed cases, but must refer such cases to the judge of probates,

[b] Const. 1777, § 41.

by whom the probate is to issue; so that independent of the additional expense of attending to both, it renders it uncertain in what place the will or probate is to be found, and makes an inquiry at a future day more uncertain.

5thly. Because the eighth section directs that the surrogate keep the original wills that are proved before him, when it is highly improbable that proper persons will be found in every county, who will take upon them so troublesome an office, for the small perquisites annexed thereto—or be at the expense of erecting offices to secure the papers with which they are intrusted, from fire or other accidents —and as most wills relate as well to real as personal estates, there is reason to apprehend greater danger to property, from their loss or falsification; more especially as in disputes that relate to land, nothing short of the original will is evidence.

6thly. Because the public and individuals have hitherto derived advantages, not only from the security which one deposit for wills under the eye of a distinguished officer affords, but from the facility which it gives creditors and others, to acquire a knowledge of the disposition of estates on which they may have claims.

7thly. Because by directing that no surrogate be appointed for the city and county of New York, and imposing the duties of surrogate for that city and county on the judge of probates, it necessarily obliges him to live in that place, and confines the appointment of judge of probate to some person residing there, to the prejudice of the other counties of this State; since it is hardly to be expected that till a salary is annexed, any one properly qualified for this trust, will change the usual place of his residence and take upon him a charge of this importance, without a more adequate support than that which arises from his perquisites of surrogate, for the city and county of New York."

The bill was not passed over the veto.

March 3. To the Senate:

"GENTLEMEN.—You will herewith receive a letter from the Secretary of Congress, of the 28th of February last, covering a duplicate of their act of the 7th of June, already before you, recommending to the several States, to make provision for officers, soldiers and seamen, who have been disabled in the service of the United States;[7] and also, his letter of the first instant, covering a state of the representation in Congress for the month of February last.

GEO. CLINTON."

New York, March 3, 1786.

March 14. To the Senate:

"GENTLEMEN.—Permit me to submit to your consideration the petition of Samuel Francis, which accompanies this message; convinced of the truth of many of the most material facts therein stated, I can with the greater freedom recommend his peculiar case to your attention.[8]

GEO. CLINTON."

New York, March 14, 1786.

March 14. To the Assembly:

"GENTLEMEN.—I herewith transmit, for your information, certain resolutions of the United States in Congress of the 3d instant, and a letter from the Governor of Virginia of the 23d of February last, enclosing a copy of a resolution of that State, appointing commissioners to meet with the commissioners of the different States, for the purpose of framing such regulations of trade as may be judged necessary to promote the general interest; together with a

[7] Chap. 42, passed April 22, 1786, made provision for the officers, soldiers, and seamen who had been disabled in the service of the United States.

[8] Chap. 66, passed May 5, 1786, appropriated two hundred pounds to Samuel Francis for the support of New York prisoners and for sundry services during the late war.

letter from Edmund Randolph, Esquire, one of the Commissioners of that State on the subject of his appointment.[9]

GEO. CLINTON."

New York, March 14, 1786.

March 17. To the Senate:

"GENTLEMEN.—From the representation of Eleazer Grant and others, inhabitants bordering upon the line of jurisdiction between this State and Massachusetts, which accompanies this message, you will perceive the necessity of having that line run and ascertained with as much dispatch as possible.

The letter from the Commissioners appointed by the United States in Congress for this service, now before the Legislature, points out the difficulties which prevent their entering upon the execution of it. I submit to the Legislature, whether measures ought not to be immediately attempted to obviate those difficulties; and I flatter myself the State of Massachusetts, equally interested with us in the preservation of peace and good order in that quarter, will readily concur in removing the obstacles which obstruct the completion of this necessary business.[10]

GEO. CLINTON."

New York, March 17, 1786.

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[9] The following concurrent resolution was adopted on the 5th of May:

"Resolved, That Robert R. Livingston, James Duane, Egbert Benson, Alexander Hamilton, Leonard Gansevoort and Robert C. Livingston, Esquire, or any three of them, be Commissioners on the part of this State, to meet with such Commissioners as are or may be appointed by the other States in the union, at such time and place as shall be agreed upon by the said Commissioners, to take into consideration the trade and commerce of the United States — to consider how far an uniform system in their commercial intercourse and regulations may be necessary to their common interest and permanent harmony; and to report to the several States such an act relative to this great object, as when unanimously ratified by them, will enable the United States in Congress assembled to provide for the same; and that the said Commissioners, or any three of them, do make a report of their proceedings to the Legislature, at their next meeting."

[10] An act, chap. 49, supplementary to the act entitled "an act to appoint agents or commissioners for vindicating the right and jurisdiction of this

March 28. To the Senate:

"GENTLEMEN.—At the instance of the Commissioners of the Land Office, I now submit to the consideration of the Legislature, a state of the claims of Henry Remsen and his associates, to certain lands in Montgomery county.[11]

GEO. CLINTON."

New York, March 27, 1786.

April 11. To the Senate:

"GENTLEMEN.—With this message I have the honor of transmitting to you a copy of certain resolutions of the Senate and Assembly of the State of Massachusetts, of the 14th of March last, respecting the ascertaining and running the boundary line between that Commonwealth and this State; which I flatter myself will enable the Legislature to obviate the difficulties which exist in the minds of the Commissioners appointed to execute that business, and which have hitherto prevented their entering upon that service. [See note 10.]

GEO. CLINTON."

New York, April 11, 1786.

April 17. To the Senate:

"GENTLEMEN.—I herewith transmit, for the information of the Legislature, a letter of the 30th ultimo, from the Governor of Massachusetts; and a letter from the Governor

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State against the claims of the commonwealth of Massachusetts, pursuant to the Articles of Confederation, and perpetual union of the United States," was passed April 28, 1786, and an act, chap. 53, supplementary to the act entitled "an act to authorize the United States in Congress assembled to appoint commissioners to complete the running a certain line of jurisdiction therein mentioned, between this State and the commonwealth of Massachusetts," was passed April 29, 1786.

[11] Chap. 67, passed May 5, 1786, which among other things provided for the speedy sale of unappropriated lands, authorized Remsen and his associates to locate 48,000 acres in Montgomery county.

of Maryland, of equal date, with the papers they respectively refer to.

I also take this opportunity of submitting to your consideration, the reports of the Commissioners for the Western and Eastern Districts, relative to the business committed to them; and the representation of Colonel Klock, respecting certain extraordinary services performed by a detachment of the militia of his regiment, for the payment whereof no provision is made.

GEO. CLINTON."

New York, April 17, 1786.

April 28. To the Assembly:

"GENTLEMEN.—By this message I lay before the Legislature, an account of the incidental expenses accrued in administering the government for the last two years, accompanied with the proper vouchers. It may not be improper to observe, that the public service required an advance of cash to the Surveyor General, to enable him to execute the duties of his office; and also some small expenditures for collecting cannon belonging to the State, and for repairing the ordnance store and battery; which (although not provided for by law) are included in this account.

I would also beg leave to remind the Legislature that certain advances of cash have been made, pursuant to concurrent resolutions of the Senate and Assembly in the last and present session, for clothing and defraying the expenses of certain Indians therein alluded to, (the audited accounts whereof accompany this message) for the payment whereof no legal provision hath been hitherto made.[12]

GEO. CLINTON."

New York, April 26, 1786.

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12 The accounts for various public expenditures were provided for by chap. 66, passed May 5, 1786.

May 5. The Legislature adjourned to meet in New York the first Monday (1st) in January, or such other time as the Governor might appoint. A resolution fixing the place of meeting had been adopted on the 29th of April.

1787. JANUARY. LEGISLATURE, TENTH SESSION.

GEORGE CLINTON, Governor.

The Legislature, acting under a statute, chapter 14, passed at the last session, had designated New York as the place of meeting of the Legislature of 1787. That statute fixed the first Tuesday of January as the annual meeting day. Several members met on that day, but a quorum did not appear in both houses until the 13th, when the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—As you are now assembled in pursuance of the law for fixing the stated meetings of the legislature, the annual appointments to be made by the Senate and Assembly, will, of course, be your first business.

GENTLEMEN.—Of the different important matters which will, at this time, call for your consideration, the requisition of the United States in Congress assembled, contained in their act of the second of August last, for the services of that year, merits your earliest, and most serious attention. Persuaded that your dispositions are truly federal, arguments would be unnecessary to induce a speedy and effectual compliance with a measure so essential to the support of our national honor and credit. It is sufficient to observe in the words of the requisition that "it is made in virtue

of the powers of the confederation, and is obligatory on the states as such."[1]

The acts of the 20th and 21st of October, for augmenting the troops in the service of the United States, with an additional requisition for their pay and support, also claim your early notice.

It will appear by the papers from the treasury board accompanying these acts, that there are some arrears stated as due on former requisitions, for the discharge of which it is equally the duty of the state to provide.

The resolutions of the United States in Congress assembled, of the 11th and 23d of August last, expressing their sense of our act of last session, for granting to them an impost and requesting on that occasion an immediate call of the Legislature, will again present to your view the revenue system, recommended by that honorable body, on the 18th of April, 1783.

I shall forbear making any remarks on a subject which hath been so repeatedly submitted to the consideration of the legislature, and must be well understood. You will receive with these resolutions the correspondence they produced; and I have only to add that a regard to our excellent constitution, and an anxiety to preserve unimpaired the right of free deliberation on matters not stipulated by the confederation, restrained me from convening you at an earlier period.[2]

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[1] This act of Congress was acceded to by chap. 83, passed April 13th, the preamble to which recited that

"Whereas the United States in Congress assembled, in and by their act of the second day of August one thousand seven hundred and eighty-six, have made a requisition on this State, for the sum of one hundred and eighty-five thousand, five hundred and sixty-seven dollars, to be paid into the treasury of the United States, in specie, and likewise the further sum of one hundred and thirty-seven thousand, four hundred and thirty-four dollars, to be paid in indents of interest, on loan office certificates, and upon other certificates of the liquidated debt of the United States."

The Treasurer was directed to pay these amounts to the Continental Loan Officer within this State or to the order of Congress.

[2] See *post*, p. 275, for note on the Federal revenue system.

GENTLEMEN.—I have the pleasure to inform you that the law passed at the last session of the Legislature, vesting commissioners with discretionary power, to determine the controversy between this State and the commonwealth of Massachusetts, otherwise than by a federal court, hath been carried into full effect; all interfering claims, both with respect to territory and jurisdiction being finally adjusted. The mutual agreement and act of cession executed with the usual solemnities by the commissioners of both states, is now laid before you, and I have the fullest confidence that the conduct of your commissioners in a mission equally difficult and important, will meet with your entire approbation; and that adequate provision will be made for the services and expenses which have arisen in laborious preparations for the trial, as well as in the final extinguishment of the contest.[3]

I have also the satisfaction to lay before you a joint report and an authenticated map of the commissioners for running the line of jurisdiction between this state and the commonwealth of Pennsylvania, in which as great progress hath been made as the season permitted. To the good understanding which subsisted between the gentlemen to whom this trust was committed by the respective states is in a great degree to be ascribed the economy in point of expense, with which you will find it to have been conducted.[4]

While through the divine goodness we enjoy the inestimable blessings of internal peace and good order, it must afford the most solid satisfaction that the animosities and disadvantages to which we have been exposed by a controverted jurisdiction are at length decisively terminated; the

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3 Two acts relating to the Massachusetts boundary line were passed at this session, namely, chap. 46, March 1st, and chap. 79, April 11th; and by the salaries act, chap. 99, April 21st, provision was made for procuring a statement of the expenses incurred on the part of New York in establishing the line.

4 A supplemental act, chap. 103, relative to the Pennsylvania line, was passed April 21st, and the salaries act, chap. 99, provided for the compensation and expenses of the New York commissioners.

public tranquillity in a point of such magnitude effectually established and secured, and the heavy additional expense which must have attended a judicial inquiry, at the same time prevented.

The arrangement of the militia, under the late law (a work which required a considerable share of time and attention) is also nearly completed, and it is with pleasure I mention, that from the spirit and military ardour which appears to pervade that respectable class of citizens, the most flattering expectations may be formed of their future conduct and services.[5]

GENTLEMEN.—The fatal ravages to which wheat, our staple commodity, hath since the commencement of the late war been exposed, by an insect until that period unknown on this continent; the rapid progress of this evil, and the prospect of its overspreading the country, are alarming circumstances. If experience hath pointed out any remedies, I submit it to you, whether it would not be wise to direct them to be communicated to the husbandmen at the public expense. Indeed it appears to me that nothing in the power of the Legislature should be omitted to avert a calamity which threatens such general distress.

It must afford you pleasure to learn that very considerable reductions have lately been made of the debts due from the public to the citizens of this state, but although there is reason to believe that the measures adopted for the purpose, when carried fully into execution, will be found to answer the expectations which were formed of them, yet it will appear from the estimates remaining on your files, that it is still necessary to make farther provision for this important service.—I have the highest confidence that your zeal for the public interest will induce you to enter on this business in due season, and with a suitable spirit: and that your wisdom will direct to such means as will prove most efficient, and at the same time least burthensome. Permit

[5] The militia law was amended by chap. 92, passed April 18th.

me only to observe, that it is by a faithful performance of our engagements, that public credit, on which the prosperity of the state so much depends, can be established on a firm and permanent basis.

GENTLEMEN.—I shall now leave with you the different papers in my possession, necessary for your information, and in the course of the session, occasionally communicate by message such other matters as may appear to deserve your notice. GEO. CLINTON."

New York, January 13, 1787.

SPECIAL MESSAGES.

January 18. To the Senate: Acknowledging its answer to his opening speech.

January 22. To the Assembly: Expressing his thanks for its address.

February 6. To the Senate: Transmitting a letter from the Continental Treasury Board, covering the account of sundry expenditures by the United States, and also a letter from chiefs of the Oneida Nation.[6]

February 13. To the Assembly:

Objections by the Council of Revision to a bill "for settling intestates' estates, proving wills, and granting administrations." [7]

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[6] The Senate, acting on the report of a committee, adopted on the 17th of February a series of resolutions relative to Indian lands, which were concurred in by the Assembly on the 19th, which resolutions, after referring to the recent agreement between Massachusetts and New York as to lands in the western part of the latter State declared that in order to prevent misunderstanding, it was necessary that the act of cession and agreement be communicated to the Indians as soon as practicable, and the Governor was requested to make such communication in person or otherwise. He was also to transmit a copy of the resolutions to the Governor of Massachusetts, and request that similar action be taken by that State. The Governor was also requested to direct "the surveyor General, or such other person as he may appoint for the purpose, to run out and mark the line commonly called the line of property, as established in 1768, between the Indians of the Six Nations, and the Crown of Great Britain, so far as the same relates to this State."

[7] This bill, relating to decedents' estates, was passed over the veto, and became a law, chap. 38, on the 20th of February.

"The Council object to the bill as inconsistent with the spirit of the Constitution. For that by the 14th, 15th, and 22d sections of the said bill, the judge of probates is vested with the power and authority to hear and determine all causes, touching any legacy or bequest in any last will or testament, payable or coming out of any personal estate; and to decree and compel payment thereof by the imprisonment of the subject, and to proceed in all matters submitted to his cognizance, according to the course of the courts, having by the common law, jurisdiction of the like matters.

The Court of Probates in this State, derived its jurisdiction of proving wills and granting administration, from the government of England; where, altho' the clergy originally obtained it by usurpation, it became at last established, and recognized by the courts of law. But as this State, while a Colony, never recognized an ecclesiastical establishment, the Court of Probates could not possess the power of decreeing the payment of any legacy or bequest, not having the compulsory process of excommunication, to enforce obedience to its decrees.

The proceedings of the Ecclesiastical courts in England, are regulated according to the practice of the Civil and Canon law, and thus, in no instance, are the pleadings and proofs referred to the consideration of a jury.

Nor does this bill afford a remedy in cases where the constitutional courts of this State are incompetent. The Court of Chancery hath power to decree on all testamentary bequests; and all the Courts of Record in this State, are expressly vested with the cognizance of all controversies respecting this point, by an act passed the 17th day of December, 1743, entitled, An act for the more speedy recovery of legacies within this Colony.

As the Court of Equity then may, and the Courts of Law must, refer all facts in litigation, to the determination of a jury, the granting those additional powers to the judge of probates, in exclusion of a trial by jury, is depriving the citizens of this State, of a right secured to them, and ren-

dered inviolate by the Constitution, which declares the trial by jury as a firm and unalterable establishment, in all cases where it had been used while this State was a Colony; and is also an indirect infringment of that clause of the constitution, which prohibits the institution of any new courts, but such as shall proceed according to the course of the common law.[a]

February 19. To the Senate:

"GENTLEMEN.— The letter from his Excellency Governor Bowdoin, and the papers accompanying it, and which I now lay before you, will convey to you the very agreeable and interesting intelligence that the rebellion in the State of Massachusetts is suppressed. I can see no objection to issuing the proclamation requested for apprehending and securing such of the rebels as may fly from justice and take shelter within this State; but I submit to you whether it would not be most proper that the measure should be sanctioned by the concurrence of the different branches of the Legislature, as it would more fully evince the sense of our government on this occasion.[8]

You will also receive with this message for your information a letter from his Excellency the Governor of North Carolina, of the 12th of January, with a copy of the act of that State therein referred to.

GEO. CLINTON."

New York, 19th February, 1787.

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[a] Const. 1777, § 41.

[8] The Legislature passed concurrent resolutions, reciting the request from the Governor of Massachusetts, and authorizing Governor Clinton to issue a proclamation offering the rewards which had been proclaimed by Governor Bowdoin for apprehending "Daniel Shays of Pelham, Luke Day of West Springfield in the county of Hampshire, Adam Wheeler of Hubbardston in the county of Worcester, and Eli Parsons of Adams in the County of Berkshire, all of the commonwealth of Massachusetts, if they shall be found in this State," and "that he further enjoin it upon the good citizens of this State, not to supply with provisions, arms or military stores, nor to afford any other aid whatsoever to any person or persons who shall be found in arms against the said Commonwealth."

February 23. To the Assembly:

"GENTLEMEN.— By this message I have the honor of laying before you, a resolution of the United States in Congress assembled, of the 21st instant.[9] With it you also receive a letter from Simeon De Witt, Esquire, Surveyor General, on a subject which appears to me to merit the attention of the Legislature.

GEO. CLINTON."

New York, February 23, 1787.

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[9] This resolution related to a convention to be called for the purpose of revising the articles of confederation in order to form a more perfect union of the States. The action of the New York Legislature, in July, 1782, recommending a general convention, has already been noted, and also the movement initiated by Virginia in January, 1786, for a convention to consider questions relating to trade and commerce. The project for such a convention was not supported by a sufficient number of States, and, therefore, nothing came of it, except an expression of opinion by a convention representing a few States, that a revision of the articles of confederation was necessary.

The subject of a Federal union was taken up again by the New York Legislature at the session of 1787, and on the 17th of February, the Assembly adopted a resolution, which was afterward concurred in by the Senate, requesting the New York delegates in Congress to propose an act "recommending to the States composing the union, that a Convention of representatives from the said States respectively, be held, and meet at a time and place to be mentioned in such recommendation, for the purpose of revising the Articles of Confederation and Perpetual Union between the United States of America, and reporting to the United States in Congress assembled, and to the States respectively, such alterations and amendments to the said Articles of Confederation, as the representatives met in such Convention, shall judge proper and necessary to render them adequate to the preservation and support of the Union."

This was presented to Congress by the New York delegates on the 21st of February, 1787, but after some discussion, it was laid aside for the purpose of considering a proposition submitted by the Massachusetts delegates, which proposition after being amended in some particulars, was adopted in the following form:

"Whereas there is provision in the articles of confederation and perpetual union, for making alterations therein, by the assent of a Congress of the United States, and of the legislatures of the several States; and whereas experience hath evinced, that there are defects in the present confederation, as a mean to remedy which, several of the states, and particularly the state of New York, by express instructions to their delegates in Congress, have suggested a convention for the purposes expressed in the following resolution; and such convention appearing to be the most probable mean of establishing in these states a firm national government:

March 3. To the Senate:

"GENTLEMEN.— I herewith communicate for your information, a letter from General Lincoln of the State of Massachusetts of the 27th of last month, and submit to you whether the interposition of the Legislature will not be necessary to prevent a continuance of the evils therein stated.[10]

GEO. CLINTON."

New York, 3d March, 1787.

March 5. To the Assembly:

"GENTLEMEN.— The forming a new county on the west side of Lake Champlain, and extending southward from the northern boundary of the State, appears to me deserving

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Resolved, That in the opinion of Congress, it is expedient, that on the second Monday in May next, a convention of delegates, who shall have been appointed by the several states, be held at Philadelphia, for the sole and express purpose of revising the articles of confederation, and reporting to Congress and the several legislatures, such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the States, render the federal constitution adequate to the exigencies of government, and the preservation of the union."

It was promptly sent to Governor Clinton, and was by him submitted to the Legislature on the 23d of February, as already appears from his special message.

On the 6th of March, 1787, the Legislature elected Robert Yates, John Lansing, Jr., and Alexander Hamilton as delegates from New York to the convention to be held in Philadelphia on the 2d of May.

[10] The Legislature responded to this message, by adopting the following resolution:

"Whereas it appears from undoubted information communicated to the Legislature by his Excellency the Governor, that a number of insurgents from the State of Massachusetts, have fled to the adjacent parts of this State and are there embodied in arms. Therefore

Resolved, That it be recommended to his Excellency the Governor, to repair as soon as possible to the place or places within this State, where the said insurgents shall be, and to call out such military force from the militia of this State, and to take under his command and direction within this State, any of the militia or other troops of the State of Massachusetts, and to take such other legal measures as he shall deem necessary and proper for apprehending and securing such of the said insurgents as shall be found within this State, and for preserving the peace of this State, against the designs and attempts of the said insurgents, their aiders and abettors, and that the Legislature will provide for the expense. And further that the Legislature do consent, that his Excellency may on this occasion be out of the State from time to time, as exigencies may require.*"

* Const. 1777, § 20.

the consideration of the Legislature, during the present session.

There is already a number of inhabitants in that quarter, and there is a prospect of speedy and considerable increase of the settlements; at present they are within the jurisdiction of Washington county, very remote from the seat of justice, and consequently the execution of the laws is almost impracticable.

Independent of the convenience to the inhabitants, there are other reasons in favor of the measure, and which will doubtless occur to you in your deliberations on this subject.[11]

GEO. CLINTON."

New York, 3d March, 1787.

March 20. To the Assembly:

Objections by the Council of Revision to a bill "directing a mode of trial, and allowing of divorces in cases of adultery."[12]

The Council objected to the provision prohibiting the remarriage of the party convicted of adultery. This prohibition was deemed inconsistent with the public good.

March 28. To the Senate:

"GENTLEMEN.— You will receive with this message for the information of the Legislature, a letter from his Excellency the Governor of Massachusetts of the 15th instant. A letter from Simeon De Witt, Esquire, Surveyor General of this State, of the 27th instant covering an account of the expenses which have accrued in running the line of jurisdiction between this State and the Commonwealth of Pennsylvania, with the estimate therein referred to,[13] a letter

11 Clinton county, embracing a large tract in the northeastern part of the State, was erected by chap. 63, passed March 7, 1788.

12 This bill, relating to divorces, was passed over the veto and became a law, chap. 69, on the 30th of March, 1787.

13 The expenses incurred in the Pennsylvania boundary matter were provided for by the salaries act, chap. 99.

from Jellis Fonda and Hendrick Frey, guardian of the Indian Children of the late Sir William Johnson, of the 22d of February last, on the subject of the trust committed to them. A report of the Commissioners of forfeitures for the eastern district, and an account of the expenses incurred in carrying into execution the concurrent resolutions of the Senate and Assembly of the 3d instant.[14] [15]

GEO. CLINTON."

New York, 28th March, 1787.

April 7. To the Assembly:

"GENTLEMEN.— I conceive it to be my duty to lay before you a letter, which you will receive with this message, sub-

[14] The salaries act, chap. 99, made an appropriation to the Governor for expenses incurred in going to Columbia county.

[15] It seems that some of the papers transmitted by the Governor at this time related to Indian affairs, for on the 2d of April the Senate adopted the following resolution, which was concurred in by the Assembly:

"Resolved, That his Excellency the Governor be requested to make such communications to the Seneca Chiefs, now at Albany, in answer to their speech, as he shall deem conducive to conciliate the good will of the Six Nations to this, and the United States; and to inform them, that the lands ceded at the treaty of Fort Schuyler in 1784, to the United States, (except those they mention in the vicinity of Oswego and Niagara) are not deemed to be comprehended within the jurisdiction of this State.

That the Legislature is informed, that Congress have as yet given no orders for the marching of any troops into the western country; that whenever troops are sent into that country, this State will recommend to Congress, that they be directed to march by the Mohawk River, and proceed by water through Lake Ontario.

That the line between this State and Pennsylvania must be continued in the direction it has been run the last year, as it has been agreed upon between our ancestors and those of the present Pennsylvanians many years ago, and whilst these States were British colonies; that this line cannot affect the property of the Indians, if they have not sold the right of soil on the south thereof to the State of Pennsylvania; that the lands laying on the north side of that line are within the jurisdiction of this State, and of which the Indians cannot be divested, unless by legal purchases made with their own consent.

That his Excellency direct the Surveyor General, to advise the said Indians of any arrangements made between him and the agents on the part of the State of Pennsylvania, for prosecuting the running of the line between that State and this State.

That his Excellency be requested to take measures to enable the Commissioners of Indian affairs to pay the necessary expenses, which may arise from the said Indians being detained at Albany, and for provisions on their journey to their habitations, together with the expense of such presents as may be made to them by the said Commissioners, this last article not to exceed one hundred dollars."

scribed by the Honorable the Delegates of the State of Rhode Island, in the Congress of the United States, complaining of a certain publication therein referred to, printed in a newspaper in this city, on the 6th instant, by Francis Childs.[16]

GEO. CLINTON."

New York, April 7th, 1787.

April 12. To the Assembly:

Objections by the Council of Revision to a bill "for the more speedy recovery of debts to the value of ten pounds." [17]

The objections relate to various matters of procedure and involve no questions of principle.

April 14. To the Assembly:

"GENTLEMEN.—I take the earliest opportunity of submitting to your consideration, a letter from his Excellency the President of Congress, of the 13th instant, respecting the treaty of peace between the United States of America and Great Britain; and also certain resolutions of the 21st of March last, on the same subject.[18]

GEO. CLINTON."

New York, 14th April, 1787.

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16 The Legislature adopted a concurrent resolution directing that the letter from the Rhode Island delegates be delivered to the Attorney-General of this State, "and that he be directed, if the said delegates so require it, to proceed upon the subject matter of the said complaint in such manner as the laws of this State may warrant."

17 This bill, for the recovery of small debts, was passed over the veto and became a law, chap. 89, on the 17th of April.

18 The following are the resolutions of Congress referred to in the Governor's message:

"Resolved, That the Legislatures of the several states cannot of right pass any act or acts, for interpreting, explaining, or construing a national treaty or any part or clause of it; nor for restraining, limiting, or in any manner impeding, retarding, or counteracting the operation and execution of the same, for that on being constitutionally made, ratified and published, they become in virtue of the confederation part of the law of the land, and are not only independent of the will and power of such legislatures, but also binding and obligatory on them.

Resolved, That all such acts or parts of acts as may be now existing in

April 21. To the Assembly:

Objections by the Council of Revision to a bill "for regulating the fees of the several officers and ministers of the courts of justice within this State."

The bill was to apply only to services performed after the 1st of June, 1787, but it repealed a former act on the same subject. The Council objected to the bill because it made no provision for the taxation of costs for services performed under the repealed statute.

The bill was not passed over the veto.

April 21. The Legislature adjourned to meet at Poughkeepsie on the first Tuesday of January, 1788, or at such earlier time as the Governor might by proclamation appoint.

THE FEDERAL REVENUE SYSTEM.[b]

Congress adopted resolutions on the 18th of April, 1783, containing the following provisions:

"*Resolved*, by nine States, that it be recommended to the several states, as indispensably necessary to the restoration of public credit, and to the punctual and honorable discharge of the public debts, to invest the United States in Congress assembled, with a power to levy for the use of

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any of the States, repugnant to the treaty of peace, ought to be forthwith repealed, as well to prevent their continuing to be regarded as violations of that treaty, as to avoid the disagreeable necessity there might otherwise be of raising and discussing questions touching their validity and obligation.

Resolved, That it be recommended to the several states to make such repeal rather by describing than reciting the said acts, and for that purpose to pass an act declaring in general terms, that all such acts and parts of acts, repugnant to the treaty of peace between the United States and his Britannic majesty, or any article thereof, shall be, and thereby are repealed, and that the courts of law and equity in all causes and questions cognizable by them respectively, and arising from or touching the said treaty, shall decide and adjudge according to the true intent and meaning of the same, anything in the said acts or parts of acts to the contrary thereof, in any wise notwithstanding."

This subject received consideration by the Legislature at the next session, resulting in the act, chap. 41, passed February 22, 1788, which expressly repealed all acts repugnant to the treaty of peace.

[b] See *ante*, p. 264, for Governor Clinton's reference to this matter.

the United States, the following duties upon goods imported into the said states from any foreign port, island or plantation."

After specifying certain articles to be subject to duty, and the amount thereof, the resolution declared:

"None of the said duties shall be applied to any other purpose than the discharge of the interest or principal of the debts contracted on the faith of the United States, for supporting the war, agreeably to the resolution of the 16th day of December last, nor be continued for a longer term than 25 years."

Collectors were to be appointed by the States, but were to be amenable to and removable by Congress, but Congress reserved the power to appoint collectors in case the State failed to make an appointment within one month after notice. The States were requested to establish for twenty-five years a revenue system, adequate for the payment of their respective proportions of the national debt. The resolution contained other provisions as to procedure prescribed for working out the scheme. The plan could not be put into operation until acceded to by all the States, "after which unanimous accession, however, they shall be considered as forming a mutual compact among all the States, and shall be irrevocable by any one or more of them without the concurrence of the whole, or of a majority of the United States in Congress assembled." The resolutions also recommended a change in the Articles of Confederation, making the expenses of the war apportionable among the States on the basis of population, rather than upon property as provided under the existing article relating to this subject. This change was made. See *ante*, p. 184, note 4.

New York responded to this proposition by enacting a law which was deemed sufficient for the purpose, but which was not approved by Congress. Chapter 61, passed May 4, 1786, "giving and granting to the United States in Congress assembled, certain imposts and duties on foreign

goods imported into this State, for the special purpose of paying the principal and interest of the debt contracted in the prosecution of the late war with Great Britain," declared by its preamble that the people of this State "are disposed to contribute to the utmost of their power to the payment of the debt contracted for the common defense of the Union during the late war."

The act adopted the schedule of articles and rates prescribed by the foregoing resolutions of Congress. The duties and imposts were to be collected as provided by the State law of 1784. The duties were to be paid to the United States, less expenses of collection. Congress might prosecute collectors for neglect of duty in the State Supreme Court or Court of Exchequer, and if a collector was convicted another was to be appointed in his place. The proceeds of the duties were to be applied exclusively for the payment of the principal and interest of the debt contracted during the late war. The act contained the following provision:

"That this act shall take effect and be in force whenever the United States in Congress assembled shall declare to the person administering the government of this State for the time being that the imposts aforesaid are agreed to or granted to their acceptation for the term of twenty-five years by the several other States in the Union, and shall continue in force for the space of twenty-five years unless the said debt shall be sooner discharged, and this State shall be answerable to the United States in Congress assembled, that the monies in which the said duties and imposts shall be received and paid by any law of this State, shall be equal to gold and silver coin."

This act was duly communicated to Congress, and that body on the 11th of August, 1786, adopted the following resolution:

"*Resolved*, That it be earnestly recommended to the executive of the State of New York, immediately to convene the legislature of the said State, to take into consid-

eration the recommendation of the 18th of April, 1783, for the purpose of granting the system of impost to the United States, in such conformity with the acts and grants of the other States, as, on her part, to enable the United States in Congress assembled, to carry the same into immediate effect."

This resolution was transmitted to Governor Clinton, who thereupon wrote to the President as follows:

NEW YORK, *August* 16, 1786.

SIR.—I take the liberty of addressing this to your excellency, to acknowledge the receipt of the resolution of the United States in Congress assembled, of the 11th instant, transmitted to me yesterday by their secretary, recommending to the executive of this State immediately to convene the legislature, to take into consideration the recommendation of the 18th of April, 1783. I beg leave to assure your excellency, that I entertain the highest deference and respect for the authority of Congress, and that it will always afford me great pleasure to have it in my power to comply with their recommendations; but in the present case, permit me to observe, that I have not power to convene the Legislature before the time fixed by law for their stated meeting, except on extraordinary occasions; and as the present business proposed for their consideration has already been repeatedly laid before them, and so recently as at their last session received their determination, it cannot come within that description. A copy of their act passed on the occasion, I have had the honor of laying before Congress through the delegates of this State, and your excellency will readily perceive it is not my province to determine how far it conforms to the recommendation in question. I cannot conclude without adding, that I feel myself unhappy to be formally called on by Congress, in an instance in which I cannot yield a compliance without breaking through one of those checks which the wisdom of our constitution has provided against the abuse of office, and

which, I am persuaded, Congress will approve the sentiment, when I declare, I find myself bound, as well by inclination as by duty, to preserve. I have the honor to be, with the highest respect, your excellency's most obedient servant,

GEO. CLINTON.

Congress took up the subject again, and on the 23d of August adopted the report of a committee with accompanying resolutions, declaring among other things that the investing the United States in Congress assembled with this power to impose duties on imports, "which includes that of forming the necessary regulations, or revenue laws, with suitable penalties, of declaring the money in which the said duties shall be received, of establishing the number of revenue officers, and ascertaining their duties, has been, and must be considered as an essential part of the plan submitted to the several states for their adoption. The exercise of this power by thirteen separate authorities would introduce different laws upon the same subject, ordain various penalties for the same offense, destroy the equality of the tax, and might, in a great measure, defeat the revenue."

That all of the States except New York had granted the imposts as recommended by Congress, but that the "long continued embarrassments of the public finances, and the indispensable demands of the federal government, dictate the necessity of an immediate and unanimous adoption of this measure."

The New York act was objected to because it did not vest in Congress the power to levy duties in that state, but reserved to the State the sole power of levying and collecting the duties in a manner prescribed by a former State law, "and consequently prevents the operation of the impost in those States which have made the exercise of this power by the United States in Congress Assembled, an indispensable and express condition of their grants." The provision in the New York act relating to the removal of

collectors was also objected to because it was a material departure from the plan recommended by Congress. The act was also objected to because under another state law import duties might have been paid in bills of credit, instead of specie.

Congress declared by the resolutions that the New York act of May 4, 1786, so essentially varied from the plan recommended by Congress that the act could not be considered a compliance with that plan so as to enable Congress, consistently with the acts of the other States to bring the system into operation. Referring to Governor Clinton's objection that he had no power to convene the Legislature in extraordinary session for the purpose of considering this question, Congress declared "that the present critical and embarrassed situation of the finances of the United States is such as to require that the system of impost should be carried into immediate effect. That New York being the only State which has not yet adopted the same, the United States in Congress assembled, did on the 11th day of the present month, and still do, deem this an occasion sufficiently important and extraordinary, to request that the Legislature of the said State should be convened, for the purpose of taking the said system into their immediate and serious consideration, and granting the same, in the manner recommended by the resolution of the 18th of April, 1783." Another resolution was adopted earnestly recommending to the Governor of New York to convene the Legislature in extraordinary session for the purpose already indicated.

The Governor's views on this question are expressed in his speech at the opening of the Legislature.

A new customs law was passed at this session, chapter 81, April 11, 1787, which provided a detailed scheme for the collection of duties on imports, and repealed former acts on the same subject, but the Legislature adhered to its policy already declared by the act of May 4, 1786, as ap-

pears by the proviso in the new act that "whenever the United States in Congress assembled, shall by any of their acts declare their acceptation of the impost intended to be granted" by the foregoing act of May 4, 1786, "then and from thenceforth, this act shall cease and be void, and the said acts now in force, and herein declared to be repealed, shall be respectively revived, and remain in full force."

1788. JANUARY. LEGISLATURE, ELEVENTH SESSION.

GEORGE CLINTON, Governor.

The Legislature met at Poughkeepsie. A quorum did not appear until the 11th of January, at which time the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—It being essential to the welfare of our confederacy that a representation in the national council should be maintained without intermission, and as the term for which the delegates from this state were elected is expired, you will perceive the necessity of proceeding to an immediate new appointment.

GENTLEMEN.—The requisition for the federal services of the current year also claims your early attention. I have full confidence that the same spirit which has invariably influenced the legislature of this state will induce you to a cheerful and effectual compliance with every measure founded on the national compact, and necessary to the honor and prosperity of the union.

It will appear from the act of Congress, and other papers on this subject, that the supplies required for the common treasury, are principally to arise from the arrears due on former requisitions. Advantages will therefore result from the punctuality of past payments, as a greater proportion

of the resources of the state may now be applied to the relief of our own citizens. To assist you in making the necessary arrangements, I shall cause to be laid before you estimates of the public debt with the receipts and expenditures since the conclusion of the war, abstracted from the treasurer's annual audited accounts, by which you will be particularly informed of the present state of our treasury.

It gives me great pleasure to inform you that the jurisdiction line between the commonwealth of Massachusetts and this state, which has been so long a subject of controversy, and attended with much inconvenience and distress to the borderers, is at length finally adjusted and that the boundary line between this state and the commonwealth of Pennsylvania is also completed. The reports of the commissioners employed in these respective transactions, accompanied with maps of the lines, will be delivered to you in order that the proper directions may be given for their authentication and deposit, and for the final liquidation and settlement of the expenses which have attended these services.[1]

I shall leave with you the several official communications which have been made to me in the recess; with these you will receive the proceedings of the general convention lately held in the city of Philadelphia, and an act of the United States in Congress for their transmission to the legislatures of the different states. From the nature of my office you will easily perceive it would be improper for me to have any other agency in this business than that of laying the papers respecting it before you for your information.[2]

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1 The expenses incident to the survey of the Pennsylvania line were provided for by the salaries act, chap. 93, March 21. A joint committee of the Senate and Assembly was appointed to attend to the authentication and deposit in the office of the Secretary of State of the reports and proceedings of the several boards of commissioners appointed to adjust and run out the Massachusetts and Pennsylvania boundary and jurisdiction lines.

2 A concurrent resolution was adopted by the Assembly on the 31st of January, and concurred in by the Senate the next day, providing for a

GENTLEMEN.—It must afford the highest satisfaction to observe that under the blessing of Heaven, tranquillity and good order continue to prevail throughout the state, and that by the industry of the citizens, the country is in a great measure recovered from the wastes and injuries of war. The profuse use, however, of luxuries brought from abroad drains us of our wealth, and is the source from which most of our present difficulties proceed. I would, therefore, submit to the wisdom of the Legislature the propriety of limiting the consumption of foreign articles, by encouraging the manufacture of our own productions, as far as may be consistent with our situations and a due regard to beneficial commerce.

GEO. CLINTON.

Poughkeepsie, Jan. 11th, 1788.

SPECIAL MESSAGES.

January 28. Thanking the Senate and Assembly for their addresses.

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convention to consider the proposed Constitution. The preamble recited the action of the Continental Congress on the 28th of September, 1787, submitting the proposed Constitution to the several States. The resolution then provided for the choosing a convention to be composed of delegates equal to the number of members of Assembly. The qualifications of voters for these delegates were broader than those prescribed by the Constitution to be possessed by persons entitled to vote for members of the Legislature. The resolution provided that all adult free male citizens might vote for delegates, and any such citizen was eligible to the office of delegate. Delegates were to be chosen at the regular election on the last Tuesday of April. The resolution provided for inspectors, clerks, and the usual election machinery. The votes were to be canvassed in the same manner as votes for members of Assembly. The convention was to meet at Poughkeepsie on the third Tuesday (17th) of June, 1788. Delegates were to receive the same compensation as members of the Assembly.

This convention met on the day appointed, and organized by choosing Governor George Clinton as president. The Federal Constitution was ratified on the 26th of July, by a vote of 30 to 27.

February 8. To the Assembly:

Objections by the Council of Revision to a bill "for apprehending and punishing disorderly persons." [3]

"The Council object to the bill as inconsistent with the spirit of the Constitution and the public good.

Because the offences mentioned in the act, are so indefinitely described, and the powers given to a single magistrate in some instances and to the justices in session in others, so extensive without the intervention of a jury, as to endanger the freedom of the citizens of this State, which consists in being governed by the laws alone, and not by the discretion of magistrates.[a]

The first offence is that of persons who shall threaten to run away, and leave their wives and children to the city or town. This offence consists only in words, which may be uttered in jest, and exaggerated by malice; or which family dissensions may draw from an irritable man laboring under domestic misfortunes, and would be too severely punished by imprisonment, scourges and hard labor in a house of correction.

Another set of offenders, subject to similar punishments, are those who not having wherewith to maintain themselves, live idle and without employment; the being idle and without employment is often involuntary, and owing rather to misfortune than vice; and were it otherwise, it would be more consistent with the spirit of our government to leave it to the punishment which naturally attends it, penury and want, than to establish an arbitrary enquiry into the lives and conduct of free citizens, or to take from them by the ignominy of their punishment, all hope of employment in future.

Similar objections lie to the including of all jugglers; this being indefinite, may by the ignorance of a single jus-

[3] This bill, for the punishment of disorderly persons, was passed over the veto and became a law, chap. 31, on the 9th of February.

[a] Const. 1777, §§ 13, 41.

tice of the peace, be extended to the punishment of persons who endeavor to turn to their own profit, and the pleasure and advantage of society, the discoveries in natural philosophy, and the improvements in mechanism, which the present enlightened age has given birth to; nor is the clause less exceptionable which includes all persons pretending to have skill in physiognomy, palmistry or the like crafty science. The pretending to knowledge of any kind, which the pretender does not possess, may be weakness and folly, but can never be a crime, unless the pretence is applied to evil purposes — but if the bill should pass into a law, the pretence alone without any act, may draw after it the heavy punishment of imprisonment, hard labor in a house of correction, stripes or servitude at the discretion of the justice. This is the more peculiarly severe, from the various constructions which ignorance or prejudice may put upon these indefinite terms "or the like crafty science." There are few persons who have not suffered their judgment of men to be biassed by their countenances. As it is still doubtful how far a skill in physiognomy may be acquired by time and study, and as we have yet experienced no inconvenience from its possession, it cannot be right to obstruct the improvement, of which it may possibly be capable.

The following description of offences tends to great oppression. 'All persons who run away and leave their wives and children, whereby they respectively become chargeable to any city or town.' This is exceptionable, first from the difficulty of determining the motive with which a man may leave his family, and the causes which may have retarded his return. It may include persons who leave them with a view to provide better for them than they can do by staying at home — it will include those unhappy men whose misfortunes compel them to avoid an unrelenting creditor — nor is there any man, whatever his present circumstances may be, who may not (through misfortune) incur the heavy penalties annexed to this bill, should it

pass into a law. The man who breaks the endearing ties which bind him to his family, more frequently deserves commiseration than punishment; and it certainly would as little consist with humanity and the principles of equal liberty, to leave such persons when poor and friendless, to imprisonment, whips and servitude at the discretion of the magistrate."

March 3. To the Senate:

"GENTLEMEN.—You will receive with this message a map of the lands set apart for the troops of the line of this State in the late army of the United States, made from a survey thereof performed under the directions of the Surveyor General in the course of last year, together with a letter from the Surveyor General, covering accounts of the expenses attending that service,[4] and of running and marking the line of property, agreeably to former resolutions of the Senate and Assembly. It may be proper to observe, that from the returns made to the Secretary's office, the claim under military rights will exceed the quantity of acres contained in the tract assigned them.

GEO. CLINTON."

Poughkeepsie, 3d March, 1788.

March 10. To the Assembly:

"GENTLEMEN.—I have the honor to lay before you for your information, the three letters with their respective inclosures which accompany this message—as the one from his Excellency Governor Randolph is dated the 27th of December, it may not be improper to mention that it was not received by me before last Friday evening.

GEO. CLINTON."

Poughkeepsie, 10th March, 1788.

[4] The map of the military tract may be found in the office of the Secretary of State.

March 20. To the Senate:

Objections by the Council of Revision to a bill "to extend the powers of the commissioners of the land office, to the cases therein mentioned, and for other purposes."[5]

"The clause which directs the sale of Nutten or Governor's Island, is inconsistent with the public good, inasmuch as the consideration resulting from such sale, cannot benefit the State so much as the loss thereof may be detrimental, in depriving the public of an island, whose advantageous situation the bill itself declares necessary for fortifications and works of defence; for which, altho' it may not be immediately necessary, yet the future safety and convenience of the State suggest the propriety of retaining it. Nor can the providing clause, by giving a discretionary power to the Commissioners, of directing the reservation of such parts thereof, for fortifications, as they shall deem proper, remove the objection, as the probable views of government may be more extensive than works of defence only. But should that not be the case, the buildings and improvements which will probably be made thereon, when sold in small lots, will defeat the object intended to be provided for."

March 22. To the Senate:

Objections by the Council of Revision to a bill "for the relief of the creditors of William Vanderlocht, and for other purposes therein mentioned."[6]

"By the last clause, the persons therein named, confined upon execution in the several gaols therein mentioned, although their several debts should exceed the sum of ten pounds, are to be discharged from custody, and the plaintiffs have no other remedy for the recovery of their demands, but against their property, if any they have, or can

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[5] This bill, relative to the powers of the Land Office Commissioners, was passed over the veto and became a law, chap. 89, on the 20th of March.

[6] The William Vanderlocht bill was passed over the veto and became a law, chap. 94, on the 22d of March.

be found. However proper it may be to extend the benefit of this act, generally to objects confined for small sums, and where the future industry of such persons afford a reasonable prospect to the creditors, of being paid thereafter, yet this will by no means apply to larger debts. Besides, by the known existing laws of this State, such plaintiffs have by a judicial process, established their demands, and they remain of record; and such an interference of the Legislature, by a partial law in favor of particular individuals, renders property insecure, and subverts the fundamental principles of the law of the land, the great and only palladium and security, for the rights and property of the people."[b]

March 22. To the Assembly:

Objections by the Council of Revision to a bill "directing the settlement of public accounts and for other purposes therein mentioned."[7]

"Although the citizens of this State, standing upon equal footing, are entitled to equal remedy and equal relief, in similar cases; yet, by the clauses of the said bill respecting the lands of Theodore Snedeker, chargeable with several legacies, the purchaser is indemnified, by a direction to the Treasurer, to pay the several legacies, upon the report of the Attorney General; and by one other clause in the said bill, relative to a certain tract of land conveyed to Cornelius Decker, forfeited by the attainder of Latting Carpenter, it is directed that the several sums due to the respective purchasers should also be paid by the Treasurer of the State; but by the said bill, the estate of Waldron Blauw, which was devised to him by the will of Richard Waldron, deceased, and subject to the payment of sundry legacies, is granted to his widow and children, without any provision for the payment of the said legacies; and by one other

[b] Const. 1777, § 13.

[7] This bill, for the settlement of public accounts, was passed over the veto and became a law, chap. 95, on the 22d of March.

clause of the said bill, respecting the lands of Joshua T. D. St. Croix, conveyed to Thomas Pearsall, and the sale of which lands, by the said bill, is admitted to be prior to the conviction of Joshua T. D. St. Croix, yet the said Thomas Pearsall is to receive no other recompence (though the purchasers of Carpenter's lands are to be paid in money) than a certificate from the Treasury; thus in one instance providing an adequate remedy, in another, a partial one, and in a third, none; and thereby making an odious and unjust discrimination between citizens, whose cases, from the very face of the bill, appear exactly similar.

The Council farther object to the said bill generally:

Because it regulates and provides for many cases totally distinct and independent of each other; and should objections by this Council be ever so well taken to any part of the said bill, they must either be overruled, and the bill become a law, or the wholesome provisions therein contained, owing to this improper mode of legislation, be lost."

March 22. The Legislature adjourned to meet at Albany on the regular day in 1789, unless sooner convened by the Governor.

1788. DECEMBER. LEGISLATURE, TWELFTH SESSION.

GEORGE CLINTON, Governor.

Governor Clinton issued a proclamation on the 13th of October, convening the Legislature at Albany, on the 8th of December, 1788, but a quorum did not appear until the 11th; at that time the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—I was induced to convene you at this time that I might have a seasonable opportunity of laying before you the proceedings of the convention of this state lately held at Poughkeepsie,

and the ordinance of Congress for putting into operation the constitution of the United States, which was adopted by that convention.

While I submit this important subject to the Legislature, it is my duty to call your particular attention to the amendments proposed by our convention to this new system of general government. It will appear from the instrument of ratification, that a declaration of rights with certain explanations are inserted in order to remove doubtful constructions, and to guard against an undue and improper administration; and that it was assented to on the express confidence that the exercise of different powers would be suspended, until it should undergo a revision by a general convention of the states. You will also perceive by the circular letter addressed to our sister states, that several articles of it appeared so exceptionable to a majority of the convention that nothing short of the fullest confidence of obtaining such a revision could have prevailed upon a sufficient number to have ratified it, without stipulating for previous amendments; and that all united in opinion, that a speedy revisal of the system would be necessary to recommend it to the approbation and support of a numerous body of our constituents, and to allay the apprehensions and discontents which the exceptionable articles of it had occasioned. These considerations, and a conviction of the truth of the observation, "that no government, however constructed, can operate well unless it possesses the confidence and good will of the great body of the people," will, I am persuaded, be sufficient to engage your best endeavors for effecting a measure so earnestly recommended by the convention, and anxiously desired by your constituents.[1]

[1] Several States, including New York, ratified the Constitution with the understanding and reservation that amendments should be proposed to cure defects which were believed to exist in the instrument. The New York Legislature, with others, proposed a new general convention to consider the Constitution. Congress, however, decided to dispose of the matter by submitting amendments to the several State Legislatures. This action resulted in the adoption of the first ten amendments to the Federal Constitution.

GENTLEMEN.—In conformity to the law passed the last session appointing commissioners to hold treaties with the Indians residing within this state, I now deliver to you a report of their proceedings, containing copies of treaties entered into with the Oneida and Onondaga nations. I flatter myself that these transactions, in which not only the peace and prosperity of the state, but the welfare of the Indians were consulted, will merit the approbation of the Legislature; and that such provision will be made as shall appear to be necessary for a faithful observance of those treaties. An account of the expenses attending this service shall be laid before you as soon as it can be arranged and adjusted, and when you consider the embarrassments which occurred in the course of these negotiations, and the magnitude of the objects which have been accomplished, I trust you will be of opinion that the strictest economy hath been observed.[2]

GENTLEMEN OF THE SENATE AND ASSEMBLY:

I shall leave with you the requisition of the United States in Congress for the federal services of the current year, together with such other communications relative to the general concerns of the Union as have been made to me in the recess.[3] I have also directed the necessary returns and estimates from our treasury, and other public offices, to be laid before you, to assist you in your deliberations on the means of reducing the debt of the state, and supporting and advancing its credit; a business which you will readily agree is of the first importance to the weal and honor of the state.

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[2] By chap. 32, passed February 25, 1789, twenty townships were to be laid out on the eastern side of land purchased of the Indians. Gospel and school lots were to be reserved in each township. The appropriation act, chap. 43, passed February 28th, made provision for the compensation and expenses of the commissioners, and for the amount payable to the Indians under the treaty. See special message of February 11, 1790.

[3] Chap. 20, passed February 12th, provided for discharging the arrears due on certain requisitions of Congress for specie.

GENTLEMEN.—When I reflect on the great change which is soon to take place in the general government, and the influence it may have on the police and revenues of the state, I am sensible it will be a difficult task to determine on the measures most proper to be pursued at this time; but I have confidence in your wisdom, and that all your decisions will be influenced by a regard for the interests of your constituents.

Permit me only to observe, that in whatever situation we may be placed, a steady attention to the promotion of agriculture and the introduction and encouragement of the useful arts, are essential to the prosperity of our country, for it is from these alone we are to derive our principal resources for profitable commerce; and it is with the blessings of Heaven, by industry and frugality, as well as by the justice and stability of our laws, that we can expect to ensure respectability abroad, or happiness at home.

GEO. CLINTON.

Albany, Dec. 11th, 1788.

SPECIAL MESSAGES.

December 24. Thanking the Assembly for its address.

December 26. The Senate presented an answer to the Governor's speech, containing the following observations on the work of the late State convention chosen to consider the new Federal constitution:

"When we reflect on the embarrassments of our National Government, destitute of support or energy, exposed to insult from abroad, and submitting to it within our acknowledged limits, languishing under a disadvantageous foreign commerce, and totally deprived of a fur trade formerly so valuable, we cannot but contemplate the approaching change, as a great and most desirable blessing.

Under such an impression, we must think your Excellency fully justified in the exercise of your prerogative, in convening the Legislature at an earlier day, than that prescribed by law, for the usual annual meeting.

If, in your Excellency's opinion, the public business had

admitted thereof, we trust, you would have called us together at an earlier period as we consider the appointment of electors, to supply the high confidential trust of President and Vice-President of the United States, the manner of which is not expressly defined, but left to the discretion of the respective Legislatures, to be of such magnitude, that if sufficient time had intervened for a general election, we should on our part, have referred it to the suffrages of the people at large, with the utmost satisfaction.[4]

We receive with pleasure your Excellency's communications, of the proceedings of the State Convention, and consider their ratification of the federal Constitution, as a happy means of cementing the union, and of relieving the United States from the many evils they experienced, from the weakness and defects of their former confederation.

Convinced Sir, of the truth of the observation, 'That no government, however constructed, can operate well, unless it possesses the confidence and good will of the great body of the people,' we cannot but contemplate the adoption of the present system, by so large a majority of the States, with the utmost satisfaction, as it affords a happy presage, that it will experience that 'confidence and good will,' but since it is susceptible of salutary improvement, and as it is our inclination as well as duty, to pursue every constitutional measure, to ensure to the government, the greatest possible degree of such 'confidence and good will,' and as respect for the late Convention is an additional motive, we shall without hesitation, recommend a submission of the system, to a general convention."

In his reply Governor Clinton said:

"GENTLEMEN.—On this occasion it would be improper to make any animadversions, either on the cause which induced to a change of our present system of Federal government, on the merits of the new Constitution, or on the consequences, which may result from its adoption. Nor is it my province to determine how far the ideas contained in your answer will tend to facilitate the attainment of the

[4] See *post*, p. 296, for a note on the establishment of the Federal government.

objects so earnestly recommended by our Convention. It is sufficient to observe that, in submitting their proceedings to the Legislature, I have discharged my duty by faithfully communicating the sentiments and wishes of the Convention, which, it is to be presumed, are consonant to the will of our constituents.

GENTLEMEN.—I regret that the Legislature could not have been convened at so early a period as to have afforded time to have made and carried into effect the arrangements necessary for appointing electors, in the manner which it seems you would have preferred; but, since this was impracticable, you will, I am persuaded, perceive the propriety of pursuing your principle, as far as circumstances will permit, and of adopting such mode of appointment, as shall appear most nearly to approach an election by the people." (See note 4.)

December 26. To the Senate:

"GENTLEMEN.—I have the honor of transmitting to you with this message, a letter from the Honorable Beverly Randolph, Esq. Lieutenant-Governor of the State of Virginia, dated the 2d of December instant, covering a letter and certain papers from the General Assembly of that State.

It is at their request I take the earliest opportunity of making this communication to the Legislature; and, I do it with the greater pleasure, from the persuasion, that it will give you satisfaction to find a State, so respectable for wisdom and patriotism, perfectly concurring in sentiment with our Convention respecting the necessity of amendments to the new system of General Government, and the means of obtaining them. [See note 1.]

GEO. CLINTON."

Albany, 26th December, 1788.

1789. January 2. To the Assembly:

"GENTLEMEN.—It has been suggested by some of the members of the Honorable the Council of Appointment, that it is necessary to appoint an additional judge of the Supreme Court of Judicature; but as I have not hitherto discovered any defect in the administration of justice in that department, and as such appointment, should it take place, will become permanent and necessarily tend to increase the expenses of our civil list, I conceived it most advisable to make this communication to the Legislature, that I may obtain their sense upon the subject, and be thereby enabled the better to determine on the expediency of the measure. And the more especially, as the members from their residence in the different parts of the State, must have discovered, if any inconveniences have arisen to the public, from the want of such an additional officer.[5]

GEO. CLINTON."

Albany, 2d January, 1789.

February 10. To the Senate:

"GENTLEMEN.—With this message, I submit to your consideration a memorial of the Marquis de Chartier de Lolbiniere, respecting his claim to certain tracts of land, on the borders of Lake Champlain.

GEO. CLINTON."

Albany, 10th February, 1789.

February 16. To the Assembly: Transmitting certain transactions of the Commissioners for holding treaties with the Indians.

[5] The Assembly adopted a resolution on the 7th of January, declaring that it was not expedient to appoint an additional judge, expressing the opinion that the existing number was adequate for ordinary purposes, and that the business of the courts would probably be lessened by the operations of the general government.

February 26. To the Senate:

"GENTLEMEN.—I have now the satisfaction to lay before you, the result of the treaty concluded yesterday at this place, with the Cayuga Indians. As the agreement made with them is founded on similar principles, to that entered into with the Onondagas last fall, I trust it will meet your approbation.

The whole proceedings of the Commissioners relative to this transaction shall, as soon as they can be transcribed and the expenses ascertained and adjusted, be laid before the Legislature.

GEO. CLINTON."

Albany, 26th February, 1789.

The Legislature approved the treaty, and directed that it be recorded in the office of the Secretary of State.

March 3. The Legislature adjourned without day.

THE FEDERAL GOVERNMENT ESTABLISHED.

On the 17th of September, 1787, the Convention which framed the Federal Constitution transmitted to the Continental Congress the proposed Constitution and the following resolutions adopted by the Convention on that day:

"*Resolved,* That the preceding constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each Convention assenting to, and ratifying the same, should give notice thereof to the United States in Congress assembled.

Resolved, That it is the opinion of this Convention, that as soon as the Conventions of nine states shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the Presi-

dent, and the time and place for commencing proceedings under this Constitution. That after such publication the electors should be appointed, and the Senators and Representatives elected: that the electors should meet on the day fixed for the election of the President, and should transmit their votes certified, signed, sealed and directed, as the Constitution requires, to the secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the time and place assigned; that the Senators should appoint a President of the Senate, for the sole purpose of receiving, opening and counting the votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

By the unanimous order of the Convention,

GEORGE WASHINGTON, *President.*
WILLIAM JACKSON, *Secretary.*"

The Constitution and resolutions were accompanied by the following letter:

IN CONVENTION, *September* 17, 1778.

SIR.—We have now the honor to submit to the consideration of the United States in Congress assembled, that Constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired, that the power of making war, peace, and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities should be fully and effectually vested in the general government of the Union; But the impropriety of delegating such extensive trust to one body of men is evident—hence results the necessity of a different organization.

It is obviously impracticable in the federal government of these States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all: individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance,

as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the Constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State is not perhaps to be expected; but each will doubtless consider, that had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect, we have the honor to be, Sir
Your Excellency's most obedient and humble servants
GEORGE WASHINGTON, President.
By unanimous order of the Convention.
His Excellency The President of Congress."

On the 28th of September, 1787, Congress transmitted to the several state Legislatures the proposed Constitution and the accompanying resolutions and letter from the Con-

vention " in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the Convention made and provided in that case."

New York ratified the federal constitution July 26, 1788.

On the 13th of September, 1788, the Continental Congress adopted the following resolution:

"*Whereas,* the Convention assembled in Philadelphia, pursuant to the resolution of Congress of the 21st of February, 1787, did, on the 17th of September in the same year, report to the United States in Congress assembled, a constitution for the people of the United States; whereupon Congress, on the 28th of the same September, did resolve unanimously, 'That the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case:' *And whereas,* the constitution so reported by the convention, and by Congress transmitted to the several legislatures, has been ratified in the manner therein declared to be sufficient for the establishment of the same, and such ratifications duly authenticated have been received by Congress, and are filed in the office of the secretary; therefore,

Resolved, That the first Wednesday in January next, be the day for appointing electors in the several states, which before the said day shall have ratified the said constitution; that the first Wednesday in February next, be the day for the electors to assemble in their respective states, and vote for a president; and that the first Wednesday in March next, be the time, and the present seat of Congress the place for commencing proceedings under the said constitution."

New York was entitled to choose eight presidential electors. On the 18th of December, 1788, the Senate passed a bill which provided that the Assembly should choose four electors and the Senate four, and that the eight so chosen should be the presidential electors. This bill was rejected by the Assembly, which passed another bill providing for

the appointment of the electors by the Senate and Assembly on joint ballot, each house having first nominated eight persons. The persons agreed upon by both houses were to be deemed appointed, and the remaining electors were to be chosen from the persons so nominated. The Senate rejected this plan and there was a conference of the two houses on the subject, but they failed to agree on a bill. This conference was on the 5th of January. The resolution of Congress required the appointment to be made on the first Wednesday, the 7th, of January. No bill was passed providing for the appointment of presidential electors.

The requirement of the Congressional ordinance that presidential electors be chosen on the first Wednesday of January was apparently regarded as directory only for the Legislature considered the subject after that date. By the ordinance the electors were to meet and vote for president and vice-president on the first Wednesday of February. On that day, at the morning session, the Assembly adopted a resolution providing for the appointment of presidential electors by the two houses on joint ballot substantially in the manner provided by the foregoing Assembly bill. The Senate rejected this resolution, and on motion of Philip Schuyler adopted another providing that the Senate choose four electors and the Assembly four, and that the eight be the electors to represent New York. The Assembly rejected this resolution.

The Legislature took no further action at that session on the subject of choosing presidential electors, and as a consequence of the failure of the two houses to agree on the method of choosing electors New York had no part in the first election of George Washington as President of the United States.

GEORGE CLINTON, Governor.

FIRST MEETING.

Governor Clinton issued a proclamation on the 4th of June, convening the Legislature at Albany, on the 6th of July. The Legislature met that day, and the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—I conceived it to be my duty to convene you at this early period, that the legislature might again have an opportunity of choosing senators to represent this state in the congress of the United States; I flatter myself that an occasion so important and interesting will command an approbation of the measure. I am sensible, however, that should your session be protracted at this season, it would be injurious as well as inconvenient to many of the members; impressed with this idea, and as nothing extraordinary hath taken place in the recess, I shall not attempt to call your attention to any other object. Our circumstances require unremitted industry and the strictest economy, and I have a confidence that this consideration alone will be a sufficient motive with you to give as much dispatch to the public business as may be consistent with safety.[1]

GENTLEMEN.—Whilst the distresses experienced by the failure of the last year's crops, particularly in the exterior settlements, and by the poorer class of people, are contemplated with anxiety, the unmerited favors daily conferred on us by Almighty God and especially the kind interposition of his Divine Providence, in so ordering the seasons as to afford a prospect of relief from the approaching harvest, cannot fail to inspire us with sentiments of unfeigned gratitude and thankfulness.

GEO. CLINTON.

[1] Philip Schuyler and Rufus King were chosen United States Senators.

The Governor's speech was accompanied by the following papers: a resolution of Congress, directing that 22 printed copies of each act be delivered to the President, two of which were to be sent by him to the executive of each State; a circular letter from President Washington to the Governors, transmitting the foregoing resolution; and certain acts of Congress.

SPECIAL MESSAGES.

July 8. Thanking the Senate and Assembly for their addresses.

July 10. To the Senate:

"GENTLEMEN.— Since the commencement of the session, I have received the several papers which accompany this message. From the purport of them you will perceive the propriety of this communication.[2]

GEO. CLINTON."

Albany, 10th July, 1789.

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[2] These papers were referred to a Senate committee, resulting in the adoption of a concurrent resolution requesting the Governor "by and with the advice and consent of the Council of Appointment, to appoint as many civil and militia officers within that part of the county of Montgomery, lately purchased from the Cayuga, Oneida and Onondaga nations of Indians, as he shall judge proper; and that his Excellency be requested to take such other measures as he shall judge necessary, by ordering out the militia or otherwise, in order to preserve the peace of that part of the said county, and for the protection of the surveyors, acting there under the authority of the State, in the execution of their business; and at his discretion to carry into effect the act entited 'An act to punish infractions of that article of the Constitution* of this State, prohibiting purchases of lands from the Indians without the authority and consent of the Legislature, and more effectually to provide against intrusions on the unappropriated lands of this State,' passed the 18th of March, 1788."

* Const. 1777, § 37.

July 15. To the Assembly:

Objections by the Council of Revision to a bill "prescribing the manner of holding elections for senators to represent this State, in the Senate of the United States."

"The Council object against the bill, as inconsistent with the public good.

1st. Because the Constitution of the United States directs that senators be chosen from each State, by the legislature thereof.

If by the Legislature is intended the members of the two Houses, not acting in their legislative capacity, no law is necessary to prescribe the mode of election, concurrent resolutions extending in this case, as well to the mode of election, as to the choice of persons; and the bill, as far as it goes, operates as a restriction upon the constitutional rights of the two Houses. If the Legislature are only known in their legislative capacity, the Senators can constitutionally be appointed by law only, and no consideration arising from inconvenience, will justify a deviation from the constitution of the United States.[a]

2d. Because this bill, when two senators are to be chosen, enacts that in case of the disagreement of the two Houses, in the nomination, each House shall out of the nomination of the other choose one, and that such persons shall be the senators to represent this State; and thus by compelling each House to choose one of two persons, neither of whom may meet with their approbation, establishes a choice of senators by the separate acts of each branch of the Legislature; in direct opposition to the Constitution of the United States, which in the third section of the first article, declares that they shall be chosen by the Legislature."

The bill was not passed over the veto.

July 16. The Legislature adjourned to meet in New York on the second Monday (11th) of January, 1790, unless sooner convened by the Governor.

[a] U. S. Const., Art. 1, § 3, clause 1.

1790. JANUARY. THIRTEENTH SESSION.

SECOND MEETING. NEW YORK.

The Legislature had adjourned to the 11th of January, 1790, but a quorum did not appear in both Houses until the 13th.

SPECIAL MESSAGES.

January 13. To the Assembly:

"GENTLEMEN OF THE LEGISLATURE.—The amendments proposed to the Constitution of the United States,[3] and the other communications which have been made to me in your recess, by the direction of Congress, will be submitted to your consideration with this message.[4] The returns required by the resolution accompanying these papers, for the treasury and war departments, are already directed to be made, and transmitted to those offices respectively.

The usual returns from your treasury, will disclose the present state of our finances, and evince the necessity of a permanent arrangement for the support of government, and the maintenance of public credit. I am happy to observe, that many interesting objects, which have, since the close of the war, occupied much of the time of the Legislature, are now accomplished, and that it will consequently be in your power to devote a greater portion of your attention to this important business.

I conceive it proper at this time to remind the Legisla-

[3] Twelve amendments to the Federal Constitution were submitted to the Legislature. By chap. 15, passed February 27, 1790, eleven were ratified. The second proposed amendment relative to the compensation of members of Congress was rejected. Only ten amendments were ratified by a sufficient number of States.

[4] One of the papers referred to in the Governor's message was an act of Congress in relation to jails. Chap. 1, passed January 28, 1790, required sheriffs to receive into the jails under their charge, persons sentenced under authority of the United States. Another paper referred to an act of Congress relative to lighthouses, and by chap. 3, passed February 3, 1790, the lighthouse and lands belonging thereto at Sandy Hook were ceded to the United States.

ture, that in the course of the present year, the period will arrive, when, by our Constitution,[b] a census of the electors and inhabitants is to be taken, for apportioning the representation in the Senate and Assembly.[5]

It is with pleasure I inform you, that the survey of the waste lands directed to be sold is completed; and that such progress has been made in the running out of those allotted as a bounty to the troops of this State, that grants may be issued to the individuals entitled to them, without any further actual surveys.[6]

I shall direct the accounts of the expenses which have accrued in those services, to be lodged in the Auditor's office, for liquidation; and I flatter myself that it will be found, that as great a regard to economy has been observed, as the nature of the business, and the obstructions which attended the execution of it, would permit.

With respect to the measure recommended more immediately to my care, by the concurrent resolution of the Senate and Assembly, in July last; it is sufficient to mention, that it has been executed without incurring any expense to the State.[7]

GEO. CLINTON."

New York, January 13, 1790.

[b] Const. 1777, § 5.

[5] A census of Senate and Assembly electors was directed to be taken by chap. 7, passed February 18, 1790.

[6] Chap. 59, passed April 6, 1790, provided for carrying into effect the concurrent resolutions and acts of the Legislature for granting certain lands promised to be given as bounty lands, and for other purposes therein mentioned. See the veto message of April 3d, concerning bounty lands.

[7] The following is the resolution referred to by the Governor:

"*Resolved*, as the sense of the Legislature, that Fort George in the city of New York, and the lands adjoining the same, ought to be reserved and secured for public uses; and that a proper House ought to be erected on part of the ground, for the residence and accommodation of the President of the United States; and that the Legislature will at the next meeting make the necessary legislative provision in the premises. And the Governor of this State is hereby requested, to cause the street, commonly called the Broadway, to be continued through the said fort, and to direct the materials of the said fort, and of the battery, to be collected and secured, at the public expense of the State."

The purpose of this resolution was effectuated by chap. 25, passed March 16, 1790, which provided for demolishing Fort George and reserved certain described lands for public uses only.

January 16. To the Senate:

"GENTLEMEN.—The whole of the business committed to the Commissioners for Indian affairs, and especially the final settlement of some accounts not being completed, I submit to you the propriety of continuing their power for a convenient time, not beyond the commencement of the next session of the Legislature.

The papers which accompany this message will inform you of the late transactions of the Commissioners; and also of the measures which in conformity to the concurrent resolutions of the Senate and Assembly in July last, have been taken to prevent intrusions on the unappropriated lands of the State. [See note 2.]

GEO. CLINTON."

New York, 16th January, 1790.

February 11. To the Senate:

"GENTLEMEN.—I submit to your consideration the propriety of making provision in the present session for ascertaining the eastern boundary line of the territory ceded by this State to the Commonwealth of Massachusetts. The Surveyor General's letter to me on this subject, which will be delivered to you with this message, points out the embarrassments which have already taken place for want of an authoritative establishment of that line.[8]

This letter also states certain difficulties attending his carrying into execution that part of the law passed the last session of the Legislature, which directs a certain tract of land to be laid out for the Brothertown Indians. The sketch of his late surveys of that part of the country,

[8] The act, chap. 59, passed April 6, 1790, relative to bounty lands, contained a provision authorizing the Surveyor-General "by agreement with the proprietors of the land ceded to the state of Massachusetts by this State, to run out and settle the eastern boundaries of the said lands." An act, chap. 33, was passed March 24, 1795, authorizing the Surveyor-General to ascertain the eastern boundary of the lands ceded by this State to the Commonwealth of Massachusetts.

accompanying this message, will tend to elucidate the subject, and assist the Legislature in giving such farther directions respecting this business as may appear to be necessary.

GEO. CLINTON."

New York, 11th February, 1790.

(See *ante*, p. 291, note 2.)

February 15. To the Assembly:

"GENTLEMEN.—At the instance of the commissioners on the part of this State, I now transmit to the Legislature, a copy of their correspondence with the commissioners appointed by the people of Vermont.[9]

GEO. CLINTON."

New York, 15th February, 1790.

February 16. To the Senate:

"GENTLEMEN.—For your information, I communicate with this message, a report of the Commissioners for holding treaties with the Indians residing within this State.[10]

GEO. CLINTON."

New York, 15 February, 1790.

February 16. To the Assembly:

"GENTLEMEN.—With this message, I submit to the Honorable the Assembly, the report of the Commissioners of the Land Office, on the petition of Francis Ossey, referred to them by a resolution of the 14th instant.

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[9] An act, chap. 2, passed July 16, 1789, appointed commissioners with authority in substance to declare the consent of New York to the erection of the State of Vermont. Another act, chap. 18, was passed March 6, 1790, appointing additional commissioners with full power to conclude all arrangements which might be necessary on the part of New York for the erection of the new State, relinquishing New York's claim to any part of the territory to be included in the new State, and repealing the act of July 16, 1789.

[10] Chap. 23, passed March 9, 1790, contained a provision relative to lands claimed by Peter Ryckman and Seth Reed, who, according to a report of a Senate committee, were referred to in the communication transmitted by the Governor.

It may not be improper at the same time to observe, that the provision intended to be made for Elijah Bill, one of the Nova Scotia refugees, by the act referred to in the said report, will prove ineffectual, for the reasons therein stated.[11]

GEO. CLINTON."

New York, February 16, 1790.

March 22. To the Senate:

"GENTLEMEN.— I have the honor to lay before you with this message, a letter from his Excellency the Governor of the State of North Carolina, dated the 20th of last month, with the papers therein referred to, and also a letter from the Honorable John Jay, offering his resignation, as one of the regents of the University of this State.[12]

GEO. CLINTON."

New York, 22d March, 1790.

March 31. To the Senate:

"GENTLEMEN.— It is with reluctance I address you at this late period; but I conceive it my duty to mention that the business assigned to the different boards established by law, and at which my personal attendance is rendered necessary has become so extensive, particularly in the land office, (which was increased by the laws of the last session; and I am informed is likely to be still further enlarged by charging it with new objects) that a faithful execution of those trusts, and at the same time, a proper attention to the important duties of my office, as prescribed by the constitution, will be impracticable.[13]

GEO. CLINTON."

New York, March 31, 1790.

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11 The act, chap. 59, passed April 6, 1790, relative to bounty lands, contained a provision authorizing the grant of lands to certain refugees, including Elijah Bill and Francis Ossey.

12 Gulian Verplanck was appointed a regent in place of John Jay.

13 On the 1st of April, 1790, the Senate adopted a report of a committee,

April 3. To the Assembly:

Objections by the Council of Revision to a bill "for the relief of John Henry and others."

The act was deemed objectionable because special in character and varying materially from general statutes relating to bankrupts; also because of numerous alleged defects prescribed, and generally, because it erected the Legislature "into a court to inquire specially into the cases of every bankrupt upon *ex parte* evidence; an inquiry which necessarily leads to great expense, and renders the laws fluctuating and unstable."

The bill was not passed over the veto.

April 3. To the Assembly:

Objections by the Council of Revision to a bill "to amend an act entitled 'an act to appropriate the lands set apart to the use of the troops of the line of this State, lately serving in the army of the United States, and for other purposes therein mentioned, and for extending relief to the persons therein named."

The bill was objected to because the act required the patents of bounty lands to be issued to the persons originally entitled thereto, but did not refer to the concurrent resolutions or laws under which the land was claimed, which would tend to defeat sales or other dispositions of such lands made on the faith of such resolutions or laws, and also because patents were to be issued to the heirs of deceased parties, ignoring dispositions of the land by will,

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recommending a change in the law by authorizing the Attorney-General to preside at meetings of boards of which the Governor was *ex-officio* a member, whenever he was not present. This recommendation was not in terms adopted, but on the 6th of April an act, chapter 53, was passed which contained a provision modifying the land office act of 1786, chapter 67, by authorizing any three of the commissioners to perform the duties prescribed by the act whenever the governor was not present. The original act, which appointed seven commissioners, provided that the duties prescribed by the statute might be performed by any three of them, of whom the governor should always be one.

thereby affecting the rights of widows and other beneficiaries.

The bill was not passed over the veto.

April 5. To the Assembly:

"GENTLEMEN.—As doubts have been suggested by some of the members of the Council of Appointment, whether, since the passing of the concurrent resolutions of the Senate and Assembly of the 22d of March, and the resolution of the Senate of the same date, vacating the seat of Philip Schuyler, Esquire, he can be considered as a member of the said Council; I conceive it proper to make this communication to the Legislature, and to accompany it with a copy of the entries from the minutes of the Council, respecting this matter, that such measures may be adopted, as shall appear necessary to obviate the evils which may arise on this subject.[14]

GEO. CLINTON."

New York, April 5, 1790.

April 6. The Legislature adjourned without day.

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[14] The following is the concurrent resolution referred to by the Governor:

"*Resolved*, as the sense of the Legislature, that it is incompatible (according to the Constitution of this State and of the United States,) that a member of Congress, or other person holding any office whatsoever under the United States, should be a member of the Senate or Assembly of this State, during his continuance in Congress, or in such office; and that whenever a member of this Legislature shall be elected or appointed a member of Congress, or to any office whatever under the United States, and shall accept of such office or appointment, it is hereby further resolved, that his seat in the Legislature ought to be vacated."

The following are the Senate resolutions of March 22d:

"*Resolved*, That the seat of the Honorable James Duane, Esquire, a Senator from the southern district, is become vacant, by his holding the office of Judge of the District Court in this State, under the authority of the United States.

Resolved, That the seats of the Honorable Philip Schuyler, Esquire, a Senator from the western district; of the Honorable John Hathorn, Esquire, a Senator from the middle district; and of the Honorable John Lawrence, Esquire, a Senator from the southern district, in this Senate, are respectively become vacant, by their holding seats in the Congress of the United States; whereby their attendance in this Senate cannot be compelled."

Philip Schuyler continued to act as a member of the Council of Appointment until a new one was chosen.

GEORGE CLINTON, Governor.

The Legislature met at New York on the 4th of January, but no quorum appeared until the 5th, at which time the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.— In performing the duty enjoined on me by the constitution, it gives me the greatest pleasure to inform you that the state is in perfect tranquillity; a peaceable submission to the laws, and a becoming respect to the authority of government, generally prevail. The militia continue to discharge the duties required of them with an honorable degree of punctuality, and to enhance their usefulness and respectability, by their progress in military knowledge and discipline.

In the recess of the Legislature, an amicable adjustment with the Indians residing within our territory has been effected, and every cause of uneasiness being removed, they now profess sentiments of friendship and attachment; humanity and the honor of the state require that ample justice should be dispensed to them, and I have the fullest confidence that adequate provision will be made for the regular discharge of the annual sums stipulated by treaty.[1]

Our frontier settlements, freed from apprehensions of danger, are rapidly increasing and must soon yield extensive resources for profitable commerce; this consideration forcibly recommends the policy of continuing to facilitate the means of communication with them, as well to strengthen the bands of society, as to prevent the pro-

[1] The appropriation act, chap. 44, passed March 24th, made provision for the payment of annuities to the Oneida, Onondaga, and Cayuga Indians.

duce of those fertile districts from being diverted to other markets.[2]

As a faithful performance of engagements is an indispensable duty, whether considered in a moral or political view, I am persuaded that no arguments are necessary to ensure a due attention to the rights of the creditors of the state, and the adoption of effectual measures for the maintenance of public faith. I have directed such returns and estimates from the treasury to be laid before you as may be necessary for your information, and flatter myself that by wise and judicious arrangements, this important object may be accomplished without imposing any new burthens on our constituents.[3]

The establishment of a permanent system of ways and means for the support of government has already been submitted to the consideration of the Legislature, and from an opinion that the measure would be salutary, particularly in its tendency to diminish the public expense, I have again thought proper to suggest it.

Provisions having been made at the last session for taking a census of the electors and inhabitants of the state, it now remains with you to apportion the future representation in the Legislature, agreeably to the rule prescribed by the constitution.[4]

The promotion of manufactures is at all times highly

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2 The subject of internal communications was considered by the Legislature, resulting in chap. 53, passed March 24th, which provided for laying out and opening a road from Walton on the west branch of the Delaware to Great Shandaken by way of Paghkataghcan. The act also directed the Commissioners of the Land Office to explore and survey the "ground situate between the Mohawk River, at or near Fort Stanwix, and the Wood Creek, in the county of Herkimer; and also between Hudson River and Wood Creek, in the county of Washington; and to cause an estimate to be made, of the probable expense that will attend the making canals, sufficient for loaded boats to pass; and report the same to the Legislature at their next meeting."

3 An act for the relief of the creditors of this State, chap. 16, was passed February 23d.

4 An apportionment act, chap. 4, was passed February 7th.

worthy the attention of government, but under the present system of our national affairs, obvious and cogent reasons exist for affording ours such encouragement as to place them in as thriving and respectable a condition as those of our sister states. Essays have lately been made to manufacture sugar from the juice of the maple tree, attended with success hitherto unknown. Our extensive forests abound with trees of that species, and the season for this business will admit of attention to it without essentially interfering with ordinary pursuits; considering therefore these favorable circumstances, and our large expenditures for that article in foreign countries, it is submitted to the Legislature whether a degree of public encouragement might not be advantageously extended to that object.

While we contemplate with pleasure the growing habits of industry and frugality in the different classes of citizens, and the prosperous condition of our agriculture and commerce, our devout acknowledgments are due to a beneficent Providence for all the blessings we enjoy, and particularly for having rewarded the toils of the husbandman with plentiful harvests.

GENTLEMEN.—I shall now cause to be delivered to you the acts of the United States in Congress; the reports of the different boards of commissioners acting under the authority of the state, and other official communications made to me in the recess, and without detaining you any longer at this time, I shall occasionally transmit by message such other matters as may require your attention.

GEO. CLINTON.

New York, January 5th, 1791.

SPECIAL MESSAGES.

January 10, 11. Thanking the Assembly and Senate respectively for their addresses.

February 1. To the Senate: Transmitting a letter and papers received from Thomas Chittenden.

February 15. To the Assembly:

"GENTLEMEN.—At the request of the Council of Appointment, I herewith transmit a copy of an entry of their proceedings, respecting the resolution of the honorable the Assembly, of the twenty-second day of January.

GEO. CLINTON."

New York, 15th February, 1791.

The following is the communication from the Council of Appointment:

"At a meeting of the Council of Appointment, held at the city hall, in the city of New York, on the eleventh day of February, 1791.

Present.

His Excellency the Governor,
Isaac Roosevelt,
Alexander Webster,
Peter Schuyler, and
Thomas Tillotson. } Esquires.

His Excellency the Governor laid before the Council a resolution of the honorable the Assembly, of the 22d of January last, expressing it as their sense, that the journals of the proceedings of the Council of Appointment ought to be published at the close of each of their sessions, in the newspaper printed by the printer for this State. Whereupon the Council having taken the same into consideration, conceive it incumbent on them to observe, that as the manner in which they are to proceed in the execution of the business committed to them is prescribed by the constitution,[a] and by the statute for organizing the government of this State, and the minutes of their proceedings declared to be public records, and placed in the custody of the Secretary of the State, it would therefore in their opinion be improper, and might subject them to reprehen-

[a] Const. 1777, § 23.

sion, if at the instance of one branch of the Legislature, the Council should depart from regulations so established.

And the Council further beg leave to observe, that even if this objection could be obviated, they would still find themselves in a delicate situation, not having the power to exact the performance of the measure required, or the means of defraying the expense attending it.

Resolved, That his Excellency the Governor be requested to transmit a copy of the preceding entry, to the honorable the Assembly.

Extract from the minutes,

Robert Harpur, Clerk of the Council."

February 22. To the Assembly:

Objections by the Council of Revision to a bill "to invest the mayor, aldermen and commonalty of the city of New York with power to license and regulate the fees of hackney coaches, and lay a tax on all wheel carriages within the city and county of New York."

The Council thought the bill inconsistent with the spirit of the constitution and public good, because, under it the city authorities might impose an annual license fee not exceeding a specified rate on hackney coaches, and all wheel carriages, and direct the manner of the collection of such tax; but a tax could not be imposed on a cart or carriage the wheels of which were not bound with iron. The Council believed that the Legislature could not delegate the power of taxation to a subordinate municipal body, remarking that "the freedom of a government consists not in the prudence of the magistrate, but in the limitation of his powers."[b]

The Council also thought the bill unconstitutional because inconsistent with the twelfth clause of the bill of rights (L. 1787, chapter 1) which provided, among other things, that no citizen should be compelled to contribute to

[b] Const. 1777, § 2.

a tax not imposed by the Legislature. The bill was also deemed objectionable because of the wide discretionary powers vested in the local authorities under which it was possible to discriminate between various classes of citizens and proper objects of taxation. The tax was to be used for street improvement, but the method of its application was also left to the discretion of the local authorities who might discriminate in favor of different parts of the city as against others, and relieve some lot owners from the burden of repairing adjoining pavements, and continue the burden as to others. The Council also said the law was unnecessary, and that it changed the system in force as to local improvements. The Council also objected to the bill because it disposed of a source of revenue which the wants of the State may one day render a proper subject for taxation. "Although standing alone, it is unequal and oppressive, yet by a combination with others, which the wisdom of the Legislature may hereafter suggest, it may be rendered equal and just."

The bill was not passed over the veto.

March 1. To the Assembly:

Objections by the Council of Revision to a bill "to enable the mayor, aldermen and commonalty of the city of New York to order the raising monies by tax, for the purposes therein mentioned."

"Because the bill authorizes and empowers the Mayor, Aldermen and Commonalty, to raise a tax for certain purposes therein designated, and for other purposes not particularly pointed out, which the Mayor, Aldermen and Commonalty in Common Council convened, 'shall think necessary and direct;' thereby leaving it to their discretion, either to provide for the poor, &c., or not to do it; if this provision is necessary, the power should be compulsory; if unnecessary, it should not be granted.

It allows an appropriation of money to certain uses, which are not designated, and in which the corporation

are to be guided by no rule, but their own judgment; which power, in conjunction with a discretionary right to tax or not to tax, amounts to a full transfer of legislative authority, as to this important object; and which for reasons that the Council have lately assigned, appear to them inconsistent with the spirit of the constitution, and the law declaratory of the rights of the citizens of this State[c]

Because this power being vested in the corporation by their corporate style, and to be exercised in their corporate capacity, and for an unlimited time, without any superintending power to direct, or even examine into the application of the money, amounts to a free gift of an annual revenue of twelve thousand pounds to the corporation of the city of New York, to be raised by a perpetual tax on the citizens; and thereby not only deprives them of the superintending protection of the Legislature, but renders it doubtful, whether, if this law should prove oppressive, the Legislature could with due regard to the rights of property, divest the corporation of it, with more propriety, than they could any other individual, (for in this light corporations must be viewed) who hold an estate by gift of the Legislature."

The bill was not passed over the veto.

March 4. To the Senate:

"GENTLEMEN.—At the request of the Regents of the University, I submit to your consideration their proceedings on the memorial and other papers therein referred to.[5]

GEO. CLINTON."

New York, March 4, 1791.

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c Const. 1777 § 2.

5 One of the recommendations included in the memorial of the Regents related to a proposed college of physicians and surgeons, and an act to authorize the Regents to establish such a college, chap. 45, was passed March 24th.

March 4. To the Assembly:

"GENTLEMEN.—I submit to the consideration of the Legislature, observations of the Attorney General, upon some defects in our Criminal Law; and also on other subjects interesting to the State, being the result of his official experience.

I also take the opportunity of communicating certain letters and other documents, respecting the conduct of the officers of the British garrison, at Point A'fere, to the inhabitants of this State in that quarter.[6]

GEO. CLINTON."

New York, March 4, 1791.

March 11. To the Senate:

"GENTLEMEN.—I herewith submit to the consideration of the Legislature, the report of the treasurer, auditor and attorney general, commissioners to receive and state accounts and claims against the State, with the papers and documents therein referred to.

GEO. CLINTON."

New York, March 11, 1791.

March 24. The Legislature adjourned without day.

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[6] The Legislature adopted a concurrent resolution requesting the Governor to communicate to the President of the United States the information he had received or might receive in relation to the conduct of the British garrison at Point A'fere.

GEORGE CLINTON, Governor.

The session opened at New York on the 5th of January, when the Governor delivered the following

OPENING SPEECH.

Gentlemen of the Senate and Assembly.—Although it gives me the highest pleasure to inform you that the same tranquillity and good order, which, under the blessings of Heaven have so eminently distinguished this state, generally prevail, yet I sincerely lament the necessity of mentioning that a daring outrage has been lately committed against the laws and authority of government in the murder of the sheriff of Columbia county, by a number of armed men in disguise. The documents which will be presented to you will furnish every necessary information. I forbear therefore, to enter into a detail of the circumstances which attended that unhappy affair. It is my duty, however, to express on this occasion, the high sense I entertain of the judicious and spirited exertions of the magistrates of that county and other friends to good government, in the apprehension of the offenders, and to acknowledge the friendly and efficient co-operation of the executives of our sister states. This unfortunate occurrence, has necessarily obliged me to sanction measures which have occasioned some extraordinary expense, and which will require legislative provision.

Complaints having been made to me in the recess by the Oneida and Cayuga nations of intrusions made upon the lands reserved by treaty for their use, justice and good faith required that I should exert the powers vested in me by law for the removal of the intruders, and this has accordingly been effected, to the satisfaction of the Indians in the manner mentioned in letters from the sheriff of

Herkimer county, which you will find among the papers delivered for your information. It is worthy at the same time of the consideration of the legislature, whether it would not be more compatible with the mild spirit of our government to commit this business in future to the ordinary magistrate, which, in the present condition of that part of the county, it is conceived may be done with safety.

The statements exhibited at the last session, disclosed the eligible condition of our finances, and from a report of the commissioners of the land office, made in pursuance of the act for the sale and disposition of the waste and unappropriated lands, it appears that our treasury will receive an augmentation sufficient, under prudent management, to produce an annual revenue exceeding the ordinary expenses of government. As part of this money is already received, and a great proportion of the residue will be paid before the next annual meeting of the legislature, it will require your wise consideration to dispose of it in such a manner as to render it productive, connecting at the same time the interest of the citizen with the prosperity of the public. I would only remark that by giving this capital an extensive circulation the necessities of individuals may be supplied, the settlement of the country advanced, and the interests of agriculture and commerce promoted.[1]

The legislature, at their last meeting, impressed with the importance of improving the means of communication, not only to the agriculture and commerce of the state, but even to the influence of the laws, directed the commissioners of the land office to cause the ground between the Mohawk River and the Wood Creek in the county of Herkimer, and also between the Hudson's River and the Wood Creek

[1] Chap. 25, passed March 14th, authorized the loan of a part of the public funds to citizens, to be secured by mortgage on land in the State actually occupied by the borrower. Two loan commissioners were to be appointed in each county.

in the county of Washington, to be explored and surveyed, and estimates to be formed of the expense of joining those waters by canals; I now submit to you their report, which ascertains the practicability of effecting this object at a very moderate expense, and I trust that a measure so interesting to the community will continue to command the attention due to its importance, and especially as the resources of the state will prove adequate to these and other useful improvements without the aid of taxes.[2]

As the diffusion of knowledge is essential to the promotion of virtue and the preservation of liberty, the flourishing condition of our seminaries of learning must prove highly satisfactory, and they will, I am persuaded, be among the first objects of your care and patronage, and receive from time to time such farther aid and encouragement as may be necessary for their increasing prosperity.[3]

GEO. CLINTON."

New York, Jan. 5th, 1792.

SPECIAL MESSAGES.

January 11, 13. Thanking the Assembly and Senate respectively for their addresses.

February 21. In the Senate a letter from the Surveyor

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2 The act for establishing and opening lock navigations within this State, chap. 40, passed March 30th, incorporated the Western Inland Lock Navigation Company for "opening a lock navigation from the now navigable part of Hudson River, to be extended to Lake Ontario and to the Seneca Lake;" and also the Northern Inland Lock Navigation Company "for the like purpose, from the now navigable part of Hudson River to Lake Champlain." The act made a free gift of $12,500 to each company on specified conditions.

3 The subject of education was included in chap. 69, passed April 11th, which appropriated £6,900 in aid of Columbia College for buildings and improvements, and seven hundred and fifty pounds annually for five years for the salaries of additional professors. Academies were also aided to the extent of fifteen hundred pounds annually for five years, to be apportioned by the Regents.

General of this State to the Governor relative to certain duties of his office was read and referred to a committee.

March 17. To the Assembly:

"GENTLEMEN.—I herewith transmit to you, accounts and vouchers of expenses attending the securing of the prisoners in the jail of the county of Columbia, who were charged with the murder of the sheriff of that county.

GEO. CLINTON."

March 17th, 1792.

March 19. To the Senate:

"GENTLEMEN.—With this message you will receive such of the laws of the United States as have been passed the present session, and officially transmitted to me. The act relative to the election of a president and vice-president of the United States, will naturally suggest the necessity of a provision for the appointment of electors.[4]

GEO. CLINTON."

19th March, 1792.

April 12. The Legislature adjourned without day.

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[4] Chap. 72, passed April 12th, provided for the appointment of thirteen presidential electors by the Legislature, four from the southern and three from each of the other districts.

1792. NOVEMBER. LEGISLATURE, SIXTEENTH SESSION.

GEORGE CLINTON, Governor.

The Legislature met at New York on the 6th of November, pursuant to the act passed at the last session for the appointment of presidential electors. On the same day the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—The present meeting being in pursuance of a law of the last session authorizing you to appoint electors of a president and vice-president of the United States, this important business will consequently engage your immediate attention; especially as farther legislative provision will be necessary on this subject, owing to the establishment of a ratio of representation different from the one contemplated by that law.[1]

As the period for the stated annual meeting of the legislature will soon arrive, economical consideration will sufficiently recommend the expediency of completing the public business previous to an adjournment. The settlement of our contested boundaries, the digest of the laws, the arrangement of our finances and the other various salutary regulations, which since the conclusion of the war have occupied the attention of the legislature, being happily accomplished, your present deliberations will necessarily be confined to a few objects. At this time I have therefore only to mention to you the necessity of providing

[1] On the 20th of November, 1792, the Legislature appointed twelve presidential electors. The second section of the act passed at the preceding session, which provided for thirteen electors, was repealed before the appointment was made. The repealing act declared that only twelve were to be chosen.

for the election of members of the house of representatives of the United States agreeably to the late apportionment,[2] the conforming our militia establishment to the regulations recently enacted by congress,[3] and the revision and amendment of such of our laws as may from experience have been found obscure or defective.

I have directed the annual reports and other papers that may be necessary for your information, to be prepared and laid before you, and if in the course of the session anything should occur requiring legislative interposition, it shall be communicated to you by message.

While the misfortunes which some of our sister states suffer by the depredations of a savage enemy, are greatly to be lamented, our unfeigned thanks are due to Divine Providence for an exemption from so great a calamity. In the recess an atrocious murder of a chief of one of the Indian nations, residing within our jurisdiction, threatened in some degree an interruption of that harmony which has hitherto so happily prevailed, but from the papers which will be communicated to you, you will perceive that the measures adopted on this occasion have preserved their confidence in the justice of government, and prevented any evil effects from that disagreeable circumstance.

GEO. CLINTON.

New York, Nov. 6th, 1792.

SPECIAL MESSAGES.

November 12, 13. Thanking the Assembly and Senate respectively for their addresses.

November 14. The Senate having adopted a resolution requesting information concerning the action of the Coun-

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[2] The original congressional apportionment bill was vetoed by the Council of Revision on the 1st of December, 1792. The bill was not passed over the veto, but a new bill was introduced, which was passed and became chap. 5, on the 18th of December, 1792.

[3] A new militia law, chap. 45, was passed March 9, 1793.

cil of Revision on a bill repealing the second section of the act relative to presidential electors, passed at the last session, the Governor replied that no Council of Revision had yet been formed, but that a summons had been dispatched by express to each of the absent members, requesting their immediate attendance. (See note 1.)

December 1. To the Senate:

Objections by the Council of Revision to a bill "for electing representatives for this State in the House of Representatives of the Congress of the United States of America." See note 2.

"The Council object against the bill becoming a law, as inconsistent with the spirit of the constitution and the public good.

First. Because it requires the canvassers to canvass and estimate all the votes contained in the boxes, delivered by the sheriffs, into the office of the Secretary of the State, however great the excess of the number of ballots may be, beyond the number of the electors named in the poll lists; hence affording an opportunity for the commission of innumerable frauds, by the introduction of double ballots, so artfully concealed as to elude discovery by the inspectors of the election, but which will nevertheless have the like effect with those fairly and *bona fide* delivered.

Secondly. Because that part of the bill, which requires the Chancellor and justices of the Supreme Court, in certain cases to canvass and estimate votes, is repugnant to the constitution, which expressly declares, That the Chancellor and judges of the Supreme Court, shall not at the same time hold any other office, excepting that of delegate to the general Congress on special occasion,"[a] the propriety of which disqualification is forcibly evinced in the present instance; the bill contemplating their appointment to an important and responsible station, in the exercise of the

[a] Const. 1777, § 25.

duties whereof, if mal or corrupt conduct should be attributed to them, and, in consequence, a prosecution or impeachment be instituted or preferred against them, they may either become subject to trial in the Supreme Court, where such members, with whom they have differed in opinion on the subject matter of the prosecution preside, or in the Court for the trial of impeachments and the correction of errors, of which such members are also judges, or be compelled to submit to a trial in the latter court, when unavoidably destitute of those of its members, who by the constitution are considered as the only permanent law members thereof; nor can it be inferred, that the duties intended to be imposed by the bill, on the chancellor and judges of the Supreme Court, are to be executed, *ex officio*, a new oath being prescribed by the bill to be taken previous to the execution thereof; besides, if the constitutionality of their appointment as canvassers was not in question, the duties enjoined by the bill on the judges of the Supreme Court, may in many cases prove incompatible with the exercise of the ordinary business of their offices, by requiring their attendance at the Secretary's office at a time when an attention to their judiciary duties is indispensable at another place.

Thirdly. Because the oath directs the canvassers to count the votes contained in the boxes, and yet in the latter part of it, declares that they shall return the person having the greatest number of votes in the district, as the member duly elected, when it may happen that the ballots for the person who really has the greatest number of votes, may either through design or mistake, not be included in the boxes, thus rendering the different parts of the oath contradictory.

Fourthly. Because the ballots are to be returned by the sheriff or his sufficient deputy, without declaring whether by his sufficient deputy any other shall be intended than the

known sworn deputy; or whether it shall be left to the discretion of the sheriff to appoint any man his deputy, or even rendering a written deputation necessary; so that the utmost latitude will be left for the commission of frauds, no person being authorized to determine the legality of such deputation.

Lastly. Because no power is given to the canvassers or any other person under oath, to determine, whether the boxes have or have not been returned by the sheriff, or his deputy (that part of the oath in the former election law, which directed the canvassers to estimate the votes contained in the boxes delivered by the sheriffs, being omitted in this bill) so that in whatever manner, the boxes may be delivered into the Secretary's office, it becomes the duty of the canvassers to count them, in direct violation of all the provisions in the law against frauds in the transportation and delivery of the boxes."

December 10. To the Assembly: The Council of Appointment on the 2d of October, 1792, appointed Aaron Burr a puisne judge of the Supreme Court. He was then a member of the Senate of the United States. The Assembly adopted a concurrent resolution on the 6th of December, which was concurred in the next day by the Senate, requesting the Governor to inform the Legislature, whether Mr. Burr had accepted the office of judge.

The Governor in response to this resolution transmitted to the Legislature a copy of a letter from the clerk of the Council informing Mr. Burr of his appointment, and also the following reply from him:

December 3d, 1792.

SIR.—I have this day received your letter, dated the 1st instant, advising me that I had been appointed a judge of the Supreme Court.

I beg, Sir, that you will be pleased to make known to the Council, that I entertain the most respectful sense of the

honor they have done me, but that the duties of the proposed office, are so incompatible with my other engagements, that I cannot accept the appointment.

I am Sir,
Your Obedient Humble Servant,
AARON BURR.

L. A. SCOTT, ESQ.

December 13. To the Senate:

"GENTLEMEN.—With this message, you will receive a copy of a letter from the Chiefs of the seven villages of lower Canada, dated the 24th of February last, and delivered to me in the recess. From this communication, as well as from another made by me at the last session, it will appear, that they lay claim to some lands in the northern parts of this State, concerning which, they express a desire of conferring with the State; I submit therefore to your consideration whether some provisional arrangements ought not to be made upon this subject. I take this opportunity of laying before you, a letter from Israel Chapin, Esquire, upon Indian affairs, and of calling your attention to a memorial of the Fish Carrier and other chiefs of the Cayuga Nation, formerly presented to the Legislature, soliciting the privilege of leasing the lands reserved to their use. The treaty held at Chemung Point by Colonel Pickering, under the authority of the United States, which sanctioned a lease that they had given of their reserved lands, although in that respect, disapproved of by the president, appears to have left an impression upon their minds, that encourages them to persevere in their application. I am sorry to observe, that a division which exists among the Chiefs of that Nation, and which the last treaty was calculated to heal, still occasions considerable embarrassment, in making the stipulated annual payments, and in transacting business with them.

You will also receive a letter from Colonel Pickering,

covering a speech of some of the Onondaga Chiefs, made to him on the 27th of April last, respecting some alterations which they wish to have effected in the boundaries of their reserved lands. The salt springs, reserved by treaty, for the mutual benefit of the State and that Nation, are objects very interesting to the community, and are daily becoming more so, by the progress of settlement in our Western country. Under present circumstances, it is impracticable to prevent trespasses upon that property, and impositions upon the public, without the aid of legislative interposition.[4]

GEO. CLINTON."

New York, December 13, 1792.

December 19. To the Senate:

Objections by the Council of Revision to a bill "to amend an act entitled 'An act for establishing and opening lock navigations within this State.'"[5]

"First. Because the power intended to be invested in the Presidents and Directors, may in its execution, prove subversive of the rights of private property, by divesting the proprietor of his land in cases not indispensably necessary for the attainment of an object of public utility; the third enacting clause of the bill, not only providing for the appropriation by the Presidents and Directors, of the land on which any canal, lock, dyke, embankment, pond, dam or other work shall be constructed, but extending such appropriation one hundred feet on both sides of any such erections or works, and expressly declaring that the land so acquired, may be applied to such uses as the Presidents and Directors shall think proper, thus wresting from an

[4] An act relative to the lands appropriated by this State to the use of the Oneida, Onondaga, and Cayuga Indians, chap. 51, was passed March 11, 1793.

[5] This bill, amending the lock navigation act of March, 1792, was passed over the veto and became a law, chap. 8, on the 20th of December, 1792.

individual his property, in a manner only justifiable in cases of urgent public necessity, without imposing on the company to which his right is devolved as a duty, that it shall be sacredly applied only to the advancement of those interests of the company, in which its private emolument is indispensably connected with the effectual promotion of public good.

Secondly. Because, previous to executing or even obtaining a writ of *ad quod damnum,* the bill authorizes the Presidents and Directors or their agents to enter upon, dig, trench and use the land of any citizen, without his permission; thus sanctioning a destruction of timber and improvements, before proper precautions have been taken to ascertain the amount of the injury sustained, and in many instances, depriving the party effected by such proceedings, of the most conclusive proof of the extent of that injury, arising from a relative comparison of the several parts of the land on which works are constructed, and those adjoining them, and a collective view of the State, of the improvements rendered useless by the appropriations made by the Presidents and Directors."

1793. January 3. To the Assembly: Transmitting the surveyor general's report and accompanying maps.

January 15. To the Assembly:

"GENTLEMEN.—I herewith transmit for your information the annual report of the Commissioners of the land office, and a summons issued out of the Supreme Court of the United States against this State, at the suit of Eleazer Oswald, surviving administrator of John Holt, deceased.

I also take this opportunity of submitting to your consideration, a letter from his Excellency the Governor of Vermont, soliciting aid for the endowment of an University in that State.

GEO. CLINTON."

New York, 15th January, 1793.

February 28. To the Senate:

Objections by the Council of Revision to a bill "for vesting the lands appropriated for highways and streets in the city of New York in the corporation of the said city."

"First, because the said bill, if passed into a law, will in every case where an individual has laid out a street through his own ground, for his own private use, or for the use of the community, giving a general right of way therein, but reserving the right of soil in himself, arbitrarily vest such right of soil in the said corporation, without the consent of the proprietor, and prevent his making any alterations therein for increasing the value of his property, without any compensation to him for such loss and injury; although it is presumable, from the powers already vested in the said corporation, by the act entitled, 'An act for the better regulating the public roads, in the city and county of New York,' passed the twenty-first of March, one thousand seven hundred and eighty-seven, the proviso contained in this bill, and the regard paid to the rights of individuals, in all former road acts, that the Legislature intended to vest in the said corporation only, the interest of the people of the State, in the said highways and streets.

Secondly. Because, whenever a public highway passes through the grounds of an individual, the right of soil in the said highway, is by the common law, vested in such individual, he having a right to the trees &c., growing thereon, which right is recognized by the act of the fourth of May, 1784, respecting public highways in certain counties of this State.

Thirdly. Because the said bill will in some instances vest in the said corporation, lands which have been heretofore laid out for highways or streets, and which have been afterwards enclosed and actually built on by the proprietors.

Fourthly. Because should any highway or street, laid out heretofore by an individual through his own grounds, be wholly altered by the said corporation, by virtue of the

powers contained in the said act of the twenty-first of March, 1787, the lands over which such highway or street passed, would not revert to the former proprietor, but remain in the said corporation, nor would he be benefitted by a forfeiture for an application of such lands, to uses different from those for which they were vested in the said corporation."

The bill was not passed over the veto.

March 5. To the Assembly:

"GENTLEMEN.— With this message I transmit to you a report made to me by Colonel Bauman, commissary of military stores, and at the same time submit to your consideration, the propriety of making some provision for the deficiencies therein stated.

GEO. CLINTON."

New York, March 5th, 1793.

March 12. The Legislature adjourned without day.

1794. JANUARY. LEGISLATURE, SEVENTEENTH SESSION.

GEORGE CLINTON, Governor.

The Legislature met at Albany on the 7th of January, and on that day the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.— It is not without great satisfaction that in meeting the legislature at this time, I can felicitate them on a continuation of our national prosperity. By the favor of divine Providence, the war which embraces so great a proportion of Europe, has not yet extended itself to this country. While we sympathize in the distresses of those who are more imme-

diately exposed to its desolating hand, we cannot sufficiently express our gratitude to that gracious Being through whose kind interposition we are preserved from a participation in them, and yet enjoy the blessings of liberty and peace.

The extensive intercourse between most of the belligerent nations and the United States, forbids us, however, to regard with indifference the war in which those powers are at present engaged; being at peace with all, and having treaties with several of them the preservation of our neutrality inviolate became an object of the first magnitude, and has commanded the attention of the general as well as of the particular governments. In accomplishing an end so essential to the present happiness and future prosperity of our country, I found myself frequently called upon by the executive of the United States to aid in carrying into effect, measures which are deemed necessary for that purpose. A full and unreserved communication of all my official acts will inform you of the cases which the existing war has given rise to within this state, and of the measures which have been pursued in consequence.

Although the general friendly disposition manifested by the United States, gives us a right to hope that the war will terminate without involving us in the miseries of it, or essentially interrupting our peace and prosperity, yet as our situation is critical, it might be imputed to me as a want of duty, were I to omit reminding you of the naked and exposed condition of our principal sea port, and urging the necessity of immediately providing for its defence. To prevent insult and invasion, we must ever be prepared to punish the one and repel the other. If it shall be thought that this appertains exclusively to the general government, you will excuse me for mentioning it as a matter whose importance has impressed me very forcibly, and for expressing my perfect confidence that if you shall not deem it expedient to originate any measure for this purpose, you

will cheerfully co-operate in such as may be judged necessary by those whose duty it may be to provide for our defense.[1]

My satisfaction in congratulating you on the increasing prosperity of our state is considerably diminished, by being obliged to inform you that the important posts on our northern and western frontiers are still possessed by foreign troops. By this violation of treaty, our settlements are greatly impeded, our agriculture obstructed, and our citizens entirely excluded from a very valuable trade to which their situation would naturally have invited them. I am aware that a notice of this aggression is more immediately within the province of the federal government, in whose zeal to redress the injury the most implicit confidence may be reposed, and whose remonstrances it is to be hoped will be attended with a success proportionate to the justice and importance of the case; but certain complaints which have been made directly to me by persons holding lands under grants from this state, and also by others whose property has been taken from them within our territory under authority derived from the British government, forbid my observing a silence on this head.

Among many other important matters, which will occupy your deliberations, are certain resolutions of the legislatures of Massachusetts and Virginia, respecting the suability of a state, which are submitted to you at the request of the executives of those commonwealths. The decision of the supreme federal court, which gave rise to these resolves, involves so essentially the sovereignty of each state that no observations on my part can be necessary to bespeak your early attention to the subject matter of them. It may be proper, however, to suggest that our convention, when deliberating on the federal constitution, in order to prevent the judiciary of the United States from extending

[1] Chap. 41, passed March 26th, appropriated thirty thousand pounds to be used in repairing and erecting fortifications at or near the city and port of New York. The same act appropriated twelve thousand pounds for fortifications on the northern and western frontiers.

itself to questions of this nature, expressly guarded against such a construction, by their instrument of ratification. A suit has, notwithstanding, been instituted by an individual against this state. To you, therefore, it will belong to pursue such measures as the occasion may require, consistent with the constitution of the United States, and best corresponding with our own sovereignty, and the general welfare of the union.[2]

The northern and western companies of inland lock navigation having, agreeably to law, produced authentic accounts of their expenditures, I have given the necessary certificate to entitle them to receive from the treasury the sum of ten thousand pounds, as a free gift on the part of this state towards the prosecution of those interesting objects. Although the care of improving and opening these navigations be committed to private companies, they will require, and no doubt, from time to time, receive from the legislature every fostering aid and patronage, commensurate to the great public advantages which must result from the improvement of the means of intercourse.

The sanguinary complexion of our criminal code has long been a subject of complaint. It is certainly matter of serious concern, that capital convictions are so frequent, and that so little attention has been hitherto paid to a due proportion between crimes and punishments. The greatest offenses occur most frequently in those countries which have been remarkable for the severity of their punishments. Hence it is becoming the policy of modern legislators to prevent crimes rather by the certainty than the severity of

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2 The subject of the suability of a State, which was included in the Eleventh Amendment of the Federal Constitution, was considered by both houses of the Legislature early in the session, each house adopting resolutions expressing its opinion on the question. While this discussion was going on in the Legislature, Congress formulated and presented an amendment to the Constitution, and on the 12th of March requested the President to transmit it to the several State executives. The amendment was submitted to the New York Legislature on the 27th of March, and an act ratifying it was passed the same day and became chap. 47. The amendment was ratified by a sufficient number of States, and took effect in January, 1798.

the sanction. If you should coincide in sentiment with me, that a revision of our penal laws is entitled to attention, I have a confidence that your wisdom and humanity will lead to such improvements as the several cases may require, and a regard to public security will warrant. Some judicious remarks of the late Attorney General on the expediency of a reform in this particular, and which have been heretofore communicated to the legislature, may assist your deliberations.[3]

The prevalence of an infectious disease in Philadelphia reduced me to the painful necessity of prohibiting an intercourse between that city and us. By the law authorizing this measure, no adequate provision is made for carrying it into effect. Certain expenses necessarily accrued which have been defrayed by the corporation of the city of New York. The reimbursement of which, and of other sums generously advanced by that board in the progress of this business, is submitted to your justice and liberality.[4]

To the congress of the United States is delegated the power of organizing and arming the militia. By their act

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3 The Assembly committee to which was referred this part of the Governor's speech presented a report recommending the abolition of capital punishment in all cases except treason and willful murder, and the substitution of solitary imprisonment and hard labor; expressing the opinion that there was a propriety in abolishing all appeals for any crimes and all forfeitures; that if a person should be convicted of a crime punishable by death or imprisonment for life, his estate should be subject to distribution the same as if he had died intestate; that punishment of the pillory and whipping ought to be abolished; and that other alterations should be made in the criminal law. The committee also recommended the institution of a lottery for the purpose of raising funds for the erection of two prisons, one in New York and one in Albany, and that until the erection of such prisons, the jails be used as places of confinement of prisoners. The Assembly directed that a bill be brought in embodying the recommendations contained in the report. There was no legislation on the subject at this session.

4 The appropriation act, chap. 58, passed March 27th, made provision for the reimbursement of the cities of Albany and New York for expenses incurred in preventing the spread of an infectious disease which had recently prevailed in Philadelphia. The Legislature, adopting the suggestion in the Governor's special message of March 4th, passed chap. 53 on the 27th of March, amending the former law in relation to the spread of infectious diseases.

every citizen who is enrolled is required, at his own expense, to provide arms and other accoutrements. This, it is to be feared, from representations I have received, many of our citizens, especially those on the frontiers, will be unable to do. Regarding the militia as our only defence in case of foreign invasion or domestic insurrection, too early attention cannot be bestowed to the arming and accoutering of them. Perhaps, therefore, it will facilitate their complete organization, upon the plan adopted by the general government, if legislative provision be made for equipping at the public expense in the first instance, such of our fellow-citizens as may be incapable of doing it themselves. In this view, it is recommended to your consideration, and I trust that its importance will justify the notice I have taken of it.[5]

I leave with you the several papers referred to in this address, and shall cause to be laid before you the annual report of the commissioners of the land office, a letter from the secretary of the treasury announcing a balance against this state, in a settlement with the United States, and the usual returns and statements from our treasury. From these documents the state of our finances may be estimated, and our public disbursements and expenditures properly regulated.

GENTLEMEN.— At no time since the revolution have public affairs required more unanimity, wisdom, prudence and patriotism in the representatives of the people than at present. It cannot, therefore, be doubted, but that you will proceed in the business of the session with all that diligence and zeal for the public good which have ever characterized the legislative bodies of this state, and that the result of your deliberations will be productive of solid and lasting advantages to our constituents.

GEO. CLINTON.

Albany, Jan. 7th, 1794.

[5] By chap. 27, passed March 22d, field artillery, arms, accoutrements, and ammunition were provided for the militia, and the act appropriated $75,000 for this purpose.

SPECIAL MESSAGES.

January 14, 15. Thanking the Senate and Assembly respectively for their addresses.

January 16. To the Assembly: Transmitting a report of the commissioners appointed under chapter 51, relating to Indian affairs, passed at the last session, also a quit-claim executed by the Onondagas, and other Indian papers.

January 28. On the 22d, the Legislature adopted the following concurrent resolution:

"*Whereas,* the Oneida, Onondaga and Cayuga tribes of Indians, incline that legislative interposition and arrangements should be made, relative to the lands appropriated by this State to the use of the said tribes. In order to effect the same, with greater facility and certainty,

Resolved, That his Excellency the Governor be requested, to dispatch a special messenger to the said tribes, desiring each of them, to depute not more than ten of their principal chiefs and warriors, to attend in the city of Albany, without delay, for the purpose of conferring on the subject matter of their applications, relative to the said lands."

On the 28th, the Governor sent the following communication to the Senate, which on the same day transmitted it to the Assembly:

"GENTLEMEN.— I am this moment informed that two of the Cayuga Indians are arrived at this place, and that a considerable number of that nation are on their way hither, and may be expected in town this evening. I would therefore suggest, the necessity of immediately adopting measures, not only for their accommodation, but also for conferring with them, on the subject matter of the concurrent resolutions of the Senate and Assembly, of the 22d instant, especially as there is no existing law authorizing such conferences.

It may be proper also to observe, that the arrival of the Chiefs and Warriors, of the Oneida and Onondaga nations at this place, may be expected a few days hence,

a special messenger having been dispatched agreeably to the request of the Senate and Assembly, with letters to them, desiring their immediate attendance.[6]

GEO. CLINTON."

Albany, 28th January, 1794.

January 30. To the Senate:

"GENTLEMEN.—Permit me to call your attention to the law for regulating the militia. Many defects were discovered in our former militia law, and the present, I apprehend, will not be found an improvement of the system:—the organization as prescribed by the law of the Union, is not perhaps liable to any material objections—the means provided by our State Legislature, in the law which adopted the federal system, I fear will not be sufficiently efficacious, to enforce and execute with advantage, the law of the United States.

How far it can be amended for this purpose, is a matter which, in my opinion, merits the serious consideration of the Legislature.

It will, I am persuaded, be admitted, that the most active and efficient force of the militia, consists of the artillery, the cavalry, the light infantry, the grenadier and the rifle companies. It is therefore submitted, whether encouragement ought not to be given, by exemptions from such duties, as are in their nature burthensome, and by other means for the completion of these corps, and the enlargement of them, as far as the law of the United States will permit.

If the artillery and cavalry could be formed into regiments and brigades, with officers appointed for their par-

[6] Chap. 58, passed March 27th, made an appropriation to John Taylor of eleven hundred and forty-three pounds ten shillings and two pence to pay the expenses of negotiations with the Oneida, Onondaga, and Cayuga Indians. Chap. 59, passed March 27th, appointed Governor Clinton and others trustees for resident New York Indians, and defined their powers as to Indian lands.

ticular command, when called out to resist invasion or to suppress insurrections, it would not only encourage military knowledge and emulation, but place these corps in a situation, to be called into actual service completely organized.

The limits of a message will not permit me, to enter into a more particular detail; but should the Legislature think proper to take up this business, I will cheerfully communicate to them such farther observations as may have resulted from official experience, and may be necessary to assist their deliberations.

The companies of artillery, which from the nature of that service merit peculiar encouragement, are not in a condition to improve themselves in that science, owing to the general want of field artillery in every brigade in the State.

Permit me to remind you, that by the last returns communicated to the Legislature, it will appear, that our military stores were exhausted and that our State artillery was in bad order. The necessity of provision before the hour of danger is evident, and a respectable park of artillery, fit for immediate service, is of the first importance. [See note 5.]

GEO. CLINTON."

Albany, 30th January, 1794.

February 3. To the Senate: Transmitting papers relating to the conference with the Cayuga Indians. (See note 6.)

February 6. To the Senate:

"GENTLEMEN.— Being informed that there is a bill before the Honorable the Senate, in which my name (among others) is inserted as a commissioner to negotiate with the Oneida, Onondaga and Cayuga Indians, respecting their reserved lands, I conceive it necessary to mention, that the

constitutional duties of my office, especially when the Legislature is in session, may not admit of my bestowing that time and attention to this business, which the nature of it, and a due regard to economy, seem to require. [See note 6.]

GEO. CLINTON."

Albany, 6th February, 1794.

February 10. To the Assembly:

"GENTLEMEN.— Since my last communication to you, on the subject of Indian affairs, the Chiefs and Warriors of the Oneida and Onondaga nations, who were invited to attend at this place, in conformity to the concurrent resolutions of the Senate and Assembly, of the 22d of last month have arrived. These Indians have been several days in town, and have repeatedly signified to me their desire to be particularly informed, of the reasons which induced the Legislature to request their attendance, and appear anxious to return home to prepare for their spring avocations. They, with those of the Cayuga nation now here, consist of about sixty persons, and are supported at a considerable expense to the public.

Motives of economy therefore seem to require that arrangements should immediately be made for accomplishing with them the business contemplated by the Legislature.

It may not be improper again to mention, that there is at present no person authorized by law to confer or enter into any negotiations with those Indians, and as I have no accurate knowledge of the nature and extent of the objects which the Legislature have in contemplation, I am unable to take any preparatory measures to facilitate the completion of them. [See note 6.]

GEO. CLINTON."

Albany, 10th February, 1794.

February 17. The Legislature on the 13th adopted the following concurrent resolution:

"*Resolved,* That his Excellency the Governor be, and he is hereby requested to confer with the Indians now in the city of Albany; and to give them the fullest assurances, of the continued friendship of this State towards their brethren the Six Nations, and that the Legislature will protect and secure them in the possession and enjoyment of their reservations, according to the agreements made with their several nations; and are ready to make any further disposition thereof, for their sole benefit, whenever the wishes of their respective nations shall be made known for that purpose. And also, that his Excellency request of the Indians now here, to declare their sentiments as to any arrangements which they wish should be formed relative to the premises; and that he make such presents to the said Indians, and furnish them with such necessaries, to enable them to return home, as he shall judge proper, not exceeding in the whole the sum of four hundred dollars; and that he communicate to the Legislature the result of such conference."

The conference was held, and on the 17th the Governor sent to the Assembly the following communication in relation to it:

"GENTLEMEN.—I herewith transmit to you copies of the conferences, held with the Cayuga and Onondaga Indians, agreeably to your concurrent resolution of the 13th instant. These Indians are now preparing to return home and I expect they will leave this place to-morrow morning. In the course of this day I hope to complete the conference with the Oneidas, so as to be able to lay the result before you to-morrow or next day at farthest.

As there are a variety of accounts attending this business, which I am unauthorized, even by resolutions, to discharge; especially, those which relate to the Cayuga and Onondaga Indians on their journey hither, I submit to the Legislature, the propriety of adopting some measures for

the liquidation of these charges, in which case, I shall immediately advance the requisite sum for the payment of them.

You will perceive by the speech of the Onondagas, their desire, among other things, of having a small addition to their present reservation. Their requests appear to be so moderate and reasonable, that I flatter myself they will not be denied them. [See note 6.]

GEO. CLINTON."

Albany, 17th February, 1794.

February 21. To the Assembly:

Objections by the Council of Revision to a bill "for the relief of Matthew Trotter."

The Council said in substance that the facts relating to the military service rendered by Mr. Trotter did not bring him within the provisions of statutes authorizing the grant of bounty lands, and that the grant made by the bill would therefore be a free gift of the property of the State. The Council thought the bill had been passed under a misapprehension of the actual situation.

The bill was not passed over the veto.

February 22. To the Assembly:

"GENTLEMEN.— You will receive with this message, the conclusion of my conference with the Oneida Indians, and a copy of an additional speech of the Cayugas, and my answer thereto.

I also herewith transmit to you, a speech made to me by Col. Lewis of St. Regis, who with three other warriors, arrived here some days ago, as a deputation from the chiefs of the seven villages or nations of Lower Canada; you will perceive by my answer to them, that I have, for the reasons therein mentioned, declined entering into any conference with them on the subject of their deputation,

other than that of receiving their communication, which is now submitted to the consideration of the Legislature. [See note 8.]

GEO. CLINTON."

Albany, 22d February, 1794.

February 28. To the Assembly:

"GENTLEMEN.—By a letter accompanying this communication, dated the 17th instant which I yesterday received from Israel Chapin, Esq., you will be informed, that the Onondaga and Cayuga Indians, residing at Buffalo Creek, may be daily expected at this place, in consequence of the message sent to those nations, at the request of the Legislature. I conceive it proper to communicate this information in order that such preparatory measures may be adopted, as shall be deemed necessary to accomplish the objects contemplated. [See note 6.]

GEO. CLINTON."

Albany, 28th February, 1794.

March 4. To the Assembly:

"GENTLEMEN.—At the opening of the session, I mentioned to the Legislature the inefficacy of the 'Act to prevent the bringing in and spreading of infectious distempers in this state.' From the papers which were then laid before you, the defects of the law are discovered. There is no provision against an intercourse with infected places by land; and even the prevention of it by water, is principally committed to the pilots, who frequently have no communication with vessels that come into our ports; neither are there any means assigned for defraying the expenses which must necessarily arise from the execution of the law; and the allowance to the health officer is, perhaps, an inadequate compensation for a faithful discharge of the important duties of his office. You will, therefore, excuse me for again suggesting to your consideration, the ex-

pediency of making some efficient arrangements in the premises. The dreadful calamities which have recently befallen a neighboring city, warn us to adopt every requisite measure, to guard against similar evils. [See note 4.]

GEO. CLINTON."

Albany, 4th March, 1794.

March 10. To the Assembly:

"GENTLEMEN.—With this message, I lay before you a memorial of Samuel Haight, Sheriff of Westchester county, praying the payment of certain expenses, incurred in guarding the jail of that county, during the confinement of John Ryer, convicted of the murder of a deputy sheriff; and also an account of expenditures, stated to have accrued in the apprehension of the said John Ryer, and claimed, besides the reward paid in consequence of my proclamation. The representatives of the county must be so well acquainted with the circumstances attending this affair, as to render it necessary for me only to mention, that from the situation of the jail in which the prisoner was confined, and the importance of preventing the escape of so daring an offender, I thought it expedient to advise extraordinary precautions.[7]

GEO. CLINTON."

Albany, 10th March, 1794.

March 12. To the Assembly:

"GENTLEMEN.—I herewith transmit to you, a speech made to me this morning, by Col. Lewis, in the presence of the other Indians from St. Regis; by which you will discover their anxiety to obtain an immediate decision on the objects of their mission.[8]

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7 Chap. 58, passed March 27th, included expenses for apprehending and guarding John Ryer.

8 At the next session, 1795, an act, chap. 17, was passed, March 5th, in relation to the St. Regis Indians.

A deputation from the Onondaga and Cayuga Indians, residing at Buffalo Creek and the Grand River, arrived yesterday at this place, with Israel Chapin, Esquire; who has signified to me, their desire of returning home, at as early a day as may consist with the convenience of the Legislature. [See note 6.]

GEO. CLINTON."

Albany, 12th March, 1794.

March 18. To the Senate:

"GENTLEMEN.—I now send copies of the different conferences that have taken place with the Cayugas and Onondagas, at present in this city; and agreeable to their request mention their earnest desire that their business may receive all possible dispatch, as they are very anxious to return home.

I also lay before you, several other papers respecting Indian affairs, particularly an account of John Wemple, with certain vouchers, the greater part of which does not appear to be warranted by my message to the Indians and instructions — copies of which you will also herewith receive; and as there may be several other charges of a similar nature attending this business, I intreat the Legislature to make some arrangements for their liquidation and settlement, as I shall not otherwise conceive myself justified in paying them. [See note 6.]

GEO. CLINTON."

Albany, 18th March, 1794.

March 20. To the Senate:

"GENTLEMEN.— As the papers which accompany this message may have some relation to business now under deliberation, I conceive it to be my duty to lay them before you, for your information.

They appeared of such importance as to induce me to transmit copies of them to the President of the United

States. The prudence of the Legislature will dictate how far this communication ought to be considered as confidential.

GEO. CLINTON."

Albany, 20th March, 1794.

March 22. To the Senate:

"GENTLEMEN.—I am informed that there is a bill now before the Legislature in which I am nominated as a commissioner, for treating with certain Indian nations. It is with reluctance I mention, that the duties already assigned to me may, as was the case during the last year, engross my whole time and attention. To prevent, therefore, any inconvenience or embarrassment, I submit to you the propriety of making the appointment complete without the insertion of my name. [See note 6.]

GEO. CLINTON."

Albany, 22d March, 1794.

March 24. To the Assembly:

"GENTLEMEN.—I now lay before you an account of incidental expenses attending Indian affairs, and other disbursements in behalf of the State, during the course of the last year, and also, an account of the expenditures, incurred in consequence of concurrent resolutions of the Senate and Assembly, respecting the Oneida, Onondaga and Cayuga nations. [See note 6.]

GEO. CLINTON."

Albany, 24th March, 1794.

March 27. To the Senate:

"GENTLEMEN.—I submit to your consideration, an amendment to the judiciary department of the constitution of the United States, proposed by Congress, and also certain resolutions of the Legislature of the State of North Carolina on the same subject. [See note 2.]

GEO. CLINTON."

Albany, 27th March, 1794.

March 27. To the Senate:

Objections by the Council of Revision to a bill "further to amend an act entitled 'An act for the better laying out, regulating and keeping in repair of common and public highways and private roads in the counties of Ulster, Orange, Dutchess, Washington, Westchester, Albany and Montgomery."

The Council objected because the bill authorized an alteration of a highway by order of the commissioners with the concurrence of the owners of the land, and without the certificate of twelve freeholders, as required by the original act.

The bill was not passed over the veto.

March 27. The Legislature adjourned without day.

1795. JANUARY, LEGISLATURE, EIGHTEENTH SESSION.

GEORGE CLINTON, Governor.

The Legislature met at Poughkeepsie the 6th of January. Instead of delivering a speech in the presence of both Houses, according to the usual custom, the Governor, being ill, sent to the Legislature the following

MESSAGE.

GENTLEMEN OF THE LEGISLATURE.—To perform the duties required from me by the constitution I am necessitated to communicate with you by message, being prevented by sickness from opening the session in person.

In informing you of the condition of the state, I am happy to observe that the same causes continue which have hitherto contributed to its prosperity. In a ready obedience to the laws, in the prevalence of public tranquillity, in the advancement of our population and settlements, and

in the growing interests of general improvement, we find abundant and multiplied sources of private happiness and national felicity. Under these favorable circumstances the objects of pointed legislative attention are necessarily restricted, and I have therefore little more to observe than to express my confidence that in the promotion of the means which may advance, and the removal of the obstacles that may retard the prosperity of the state, will be felt the wisdom of your deliberations and the efficacy of your measures.

As the alarming aspect of public affairs induced the legislature at their last session, to make provision for the purchase of arms and ammunition, and the fortification of our sea port and frontiers, a full detail of the execution of these different objects will now be submitted to you. Although the appropriations for fortifications were in the first instance incompetent and the advanced price of labor and provisions, has since increased the inadequacy, yet the works intended for the protection of our principal city and harbor, are in great forwardness, the patriotic exertions of the inhabitants having supplied in no inconsiderable degree, the deficiency of the grant. I should, however, on this occasion conceive myself deficient in duty, were I not to observe that many of the reasons which induced their commencement, still exist for their completion; that the events of Europe may have influenced our political relations cannot be doubted, but the daring claim recently made upon our western territories, and which in its principle, comprises a considerable part of the state, admonishes us to be on our guard, and to be prepared to meet such menaced aggressions with a resistance proportioned to their magnitude.[1]

The revision of our criminal code cannot re-occupy your attention at too early a period, or in too serious a manner; the expectation of our constituents, the feelings of human-

[1] Fortifications were further provided for by chap. 43, passed April 6th.

ity, and the welfare of the community, are deeply interested in the prosecution of this design. It is indeed a subject of melancholy consideration, that our criminal law should be so repugnant to the mild genius of our constitution, and so similar in its punishments to the cruelty of despotic governments. The substitution of hard labor or confinement, instead of the punishment of death, will be greatly facilitated by the fortifications erecting on the islands in the vicinity of New York. And while you are engaged in this business, it may not at the same time be unworthy of your inquiry whether our system of jurisprudence is not in other respects defective in its being so implicitly borrowed from a nation differing from us in manners, government and principles of policy.

While it is evident that the general establishment and liberal endowment of academies are highly to be commended, and are attended with the most beneficial consequences, yet it cannot be denied that they are principally confined to the children of the opulent, and that a great proportion of the community is excluded from their immediate advantages; the establishment of common schools throughout the state, is happily calculated to remedy this inconvenience, and will therefore re-engage your early and decided consideration.[2]

I have directed the usual returns and statements to be laid before you to assist you in your deliberations, together with such other communications as may be necessary for your information.

GEO. CLINTON.

Greenwich, Jan. 3, 1795.

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2 Common schools were established by chap. 75, passed April 9th. This was the first general common school law. It was to continue in force five years.

SPECIAL MESSAGES

January 13. The Legislature adopted the following concurrent resolution:

"*Whereas,* it appears by a communication from his Excellency the Governor, that by reason of his extreme indisposition, he at present is not, and probably will not be able during the continuance of the present session of the Legislature, to attend at the town of Poughkeepsie. *And whereas,* it is expedient, in order to advance the public service, that the Legislature and the Council of Revision, of whom the Governor of this State for the time being, if within the State, must be one, should reside at the same place: Therefore,

Resolved, That the Legislature will adjourn on the 14th day of January instant, to meet at the city hall of the city of New York, on the 20th day of January, instant."

January 14. The Legislature adjourned pursuant to the foregoing resolution.

January 20. The Legislature convened in New York pursuant to adjournment.

February 2. To the Assembly: Transmitting a letter from the Surveyor General.[3]

February 20. To the Assembly:

"GENTLEMEN.—I submit to your consideration a communication from the Secretary of War, relative to certain Indian Claims.

I also transmit a letter from Eleazer Oswald, administrator of John Holt, deceased, with the papers, therein mentioned, as the subject to which this letter relates, was submitted to the Legislature at the last session; and a resolution was passed, instructing the Attorney General, re-

[3] Chap. 33, passed March 24th, authorized the Surveyor-General to establish the boundary line between New York and Massachusetts and provided that grantees of land who might be deprived thereof because the same was included in territory ceded to Massachusetts, should be entitled to receive as compensation therefor other unappropriated State land of equal value, and patents were to be issued accordingly by the Commissioners of the Land Office.

specting this business: I beg leave to refer to him for such farther information as may be deemed necessary.[4]

GEO. CLINTON."

Greenwich, 18 February, 1795.

March 7. To the Senate:

"GENTLEMEN.—With this message you will receive a communication from the agents appointed to confer with the representatives of the St. Regis Indians, which will necessarily require your immediate attention.

It must readily occur to you, that no legislative direction exists with respect to the greater part of the expense incident to this occasion. The concurrent resolution of the third instant, only refers to the accommodation of the Indians, while in this city, and neither provides for the customary gratuities, nor the expenses arising from their journey here and their return.[5]

I also transmit a letter from some of the Chiefs of the

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[4] It seems that Oswald obtained a judgment against New York in the Supreme Court of the United States, and the appropriation act, chap. 76, passed April 9th, made provision for the payment of the judgment, and also for the expenses incurred by the Attorney-General in the suit.

[5] Acting on this communication relative to the St. Regis Indians, the Legislature adopted the following resolution:

"Resolved, as the sense of both Houses of the Legislature, that it is advisable a future meeting (at such time and place as shall be deemed most convenient) should be appointed by his Excellency the Governor, to be held with the Indians generally known or distinguished as the Indians of St. Regis, in order to treat and finally to agree with the said Indians touching any right or claim which they may have or make to any lands within the limits of this State. And further that his Excellency the Governor in addition to the request contained in the concurrent resolution of both Houses of the third instant, be also requested, to cause the twelve Indians mentioned in the said concurrent resolution to be furnished with such sum of money as may be requisite to defray the expenses of their journey to this city and on their return home. And also that his Excellency the Governor be requested to cause such presents or gratuities, as he shall deem proper to be given to the said twelve Indians in behalf of this State. And that the Legislature will make the requisite provision for carrying these resolutions into effect."

See also chap. 17, passed March 5th, which related to the St. Regis Indians. This act was repealed by the appropriation act, chap. 76, passed April 9th, which placed three thousand pounds at the disposal of the Governor for use in effecting a treaty with the St. Regis Indians, and for acquiring other Indian lands in the northern part of the State.

Onondaga Nation, respecting the agreement made with them, in 1793, by the commissioners appointed for that purpose.

GEO. CLINTON."

Greenwich, 7th March, 1795.

The resolution referred to in this message authorized the Governor to make provision for the accommodation of twelve St. Regis Indians, who were expected in New York that day on business relative to their claim on the State.

March 11. To the Assembly:

"GENTLEMEN.—As by an act entitled, 'An act for the payment of the salaries of certain officers of government, and other contingent expenses,' passed 27th March, 1794, an appropriation of three thousand five hundred pounds is made for the support of such of the inhabitants of St. Domingo resident within this State as shall be found in want of such support, subject however to certain conditions and restrictions therein specified; and as it is also directed in the said act, that a regular statement and account shall be kept of the monies so expended, and that the same be reported to the Legislature at their next session, I therefore communicate to you the proceedings which have taken place under the said law, and have only to observe, that the humane purposes contemplated by the grant, will not in all probability be completely answered, without permitting the whole sum to be expended; and as doubts may arise, whether the person administering the government will be justified in drawing monies for this purpose from the treasury, after the rising of the legislature, I submit it to your consideration, whether some additional provision will not be necessary.[6]

GEO. CLINTON."

Greenwich, 10th March, 1795.

[6] The authority requested by the Governor in relation to the St. Domingo refugees was conferred by the appropriation act, chap. 76.

March 31. To the Assembly:

Objections by the Council of Revision to a bill "for the relief of certain persons claiming lands in the patents therein mentioned." [7]

"Because, whenever a trust or power created by law hath been executed, the law then in respect to rights consequent on such execution, becomes as unalterable and irrepealable as a grant of a right, whether the grant be made immediately by the Legislature, or by an agent entrusted or empowered by them; and the authority of the Legislature to annul or abridge a right is not less restrained where the right is in virtue of a special law, than where it is in virtue of the general laws of the land, or of the acts of parties;[8] neither is it sufficient reason for the exercise of such authority, that the law was passed in any manner unadvisedly. By the act 'to ascertain the limits and boundaries between the patents of Kayaderosseras, Half Moon and Clifton Park,' passed the eleventh March, 1793, the determination of the commissioners, is to bind all claimants deriving title under these patents respectively, and the commissioners having executed their trust, or power, by making a determination, there is now a right in every claimant to conclude every other claimant from questioning the boundaries as determined by the commissioners; but by the bill, 'the title of no person whomsoever claiming lands in the patents of Halfmoon or Clifton Park, by lease or purchase, in fee simple, and who did not subscribe the agreements to petition or the petitions to the legislature for the act, shall be bound or in any ways affected by the determination of the commissioners,' because, as it is recited in the bill, 'no public notice was given by the petitioners, that they would apply or had applied to the legislature for the act and for want of such notice, the lessees and

[7] This bill, for relief under certain patents, was passed over the veto and became a law, chap. 57, on the 7th of April.

[8] U. S. Const. Art. 1, § 10, clause 1.

purchasers under the proprietors of the Halfmoon and Clifton Park, had not an opportunity afforded them to show cause why the prayer of the said petitioners should not be granted,' so that the principles here advanced by the Council, are properly and obviously applicable to the bill; they are relied on as just, and the Council do not discern it either as unwarrantable by the constitution, or unsalutary in itself, to extend them even to a case where it might be charged against the persons, on whose prayer the law may have passed, that they had deceived the legislature by false suggestions to the injury or damage of others.

Because, the relief intended by the bill is partial, being confined only to persons claiming by lease or purchase in fee simple, whereas the reason for the interference of the legislature, as assigned in the bill, and already stated, is general, and must with equal fitness and justice apply to all persons without discrimination, as to the mode of title by which they may claim.

Because, the description of the persons intended to be relieved is defective, it not being to be collected from the bill, with due certainty, whether immediate lessees or purchasers only are intended, in exclusion of persons claiming as heirs or devisees, or as personal representatives to lessees for years, or whether the lessees or purchasers from original grantees, and the heirs, devisees, assigns and personal representatives of such lessees and purchasers, in exclusion of persons claiming under original grantees, by title, consisting throughout in descent or devise.

Because the bill, by leaving the determination of the commissioners still binding on some claimants, and being silent whether the determination shall bind these claimants as between themselves only, may operate so as not to accord with equality of justice between all claimants. This may be exemplified by supposing the determination to be in favor of a person who had, against a person who had not, subscribed the agreements to petition or the petitions

to the legislature for the act; the former cannot avail himself of the determination against the latter, but if, in the converse of the case, the latter could avail himself of the determination against the former, it is evident, that then the rule between these parties would not be equal."

April 1. To the Assembly:

"GENTLEMEN.—I now communicate to you the final report of the Agents appointed by me to meet the several Indians who have come to this city during the present session of the Legislature.[8]

I also lay before you certain letters from Major General Gansevoort, and cannot doubt but that adequate compensation will be made for the services and expenses therein stated.[9]

GEO. CLINTON."

Greenwich, 1st April, 1795.

April 9. To the Senate:

Objections by the Council of Revision to a bill "for the better support of the Oneida, Onondaga and Cayuga Indians."[10]

"Because by concurrent resolutions of both houses of the legislature of the 13th February, 1794, 'His Excellency the Governor, was requested to confer with the Indians then in the city of Albany, and to give them the fullest assurances of the continued friendship of the State towards their brethren the Six Nations, and that the Legislature would protect and secure them in the possession and enjoyment of their reservations, according to the agreements made with their several nations, and were ready to make any further disposition thereof for their sole benefit, whenever the wishes of their respective nations shall be made

[8] The appropriation act, chap. 76, made provision for the expenses incurred in the conference with the Indians in 1795.

[9] General Gansevoort's claim was provided for by the appropriation act, chap. 76.

[10] This bill, for the support of the Oneida, Onondaga, and Cayuga Indians, was passed over the veto and became a law, chap. 70, on the 9th of April.

thereon for that purpose,' but by the bill, the annuity to be stipulated by the agents to be paid by the people of this State to the Oneida and Cayuga Indians, for the residue of the reservations not appropriated in the manner specified in the bill, ' shall not exceed an annual interest of six per cent on the principal sum which would arise from the sale of such residue, if the same was sold at four shillings per acre;' and the bill, after directing the Surveyor General to lay out the tracts, for which such annuity shall be stipulated, into lots and to sell the same, ' provides, that none of the said lots shall be sold for less than sixteen shillings per acre,' and which the Council also presume to be not less than the value thereof, so that the disposition, to which the agents are by the bill authorized, will be a disposition three-fourths of which at least will be for the benefit of the State, and consequently not a disposition for the sole benefit of the Indians. The restrictions therefore on the agents in respect to the amount of the annuities to be stipulated by them, is inconsistent with the assurances contained in the above recited resolutions, and which, agreeable to the request of both houses were made to the Indians by his Excellency the Governor."

April 9. The Legislature adjourned without day.

JOHN JAY, Governor.

The Legislature met at New York on the 5th of January, but a quorum did not appear until the next day, at which time the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—Permit me to avail myself of this first opportunity which has occurred of expressing through you to my constituents the high sense I entertain of that esteem and confidence which prompted them to place me in the station I now fill. Fully apprised of the duties which it imposes upon me, my best endeavors shall be exerted to fulfill them; and I flatter myself that in the course of my administration, the sincerity of this assurance will be found to rest on better evidence than professions can afford.

To regard my fellow citizens with an equal eye; to cherish and advance merit, wherever found; to consider the national and state constitutions and governments as being equally established by the will of the people; to respect and support the constituted authorities under each of them; and in general, to exercise the powers vested in me with energy, impartiality and prudence, are obligations of which I perceive and acknowledge the full force.

I concur in the sentiments and adopt the language of our excellent and illustrious President, in observing that "we could not have met at any period when more than at the present the situation of our public affairs afforded just cause for mutual congratulations," and I make this observation with the greater pleasure, as in the general welfare of the union, this state participates so largely.

The rapid increase of our population; the flourishing state of our agriculture and commerce; the extension of

John Jay

our external and internal navigation; the progress of learning and science, so essential to rational liberty and good government; and the uncommon degree of wealth and plenty, which follow the footsteps of industry and the arts of peace in all their walks, unite with numerous other blessings in affording us abundant reason to rejoice, to be content, and to be grateful.

But although national prosperity can neither be attained nor preserved without the favor of Providence, so neither can it be attained or preserved without the subordinate instrumentality of those means, which Providence provides, and reason directs us to use.

There is no state of human happiness, public or private, so perfect or secure, as to dispense with that constant care and superintendence, which all our affairs require and which you will now find it expedient to extend to several interesting objects.

It has been often and justly observed that in order to preserve peace, every nation should not only treat others with justice and respect, but also be in constant readiness to resist and repel hostilities. Imbecility invites insult and aggression, and the experience of ages proves that they are the most secure against war who are the best prepared to meet it.

Although it belongs to our national government to provide for the defence of the United Sates, and although that great object will doubtless continue to receive, as well as to claim their attention, yet it is also highly interesting that nothing properly depending on us be omitted to give efficacy to their laws and measures.

Having but one port through which the great mass of our exports and imports pass, the importance of fortifying it has been generally seen, and considerable progress has been made in executing the plans formed under the direction of the general government for that purpose. Much yet remains to be done, and if from the details which will be laid before you, it shall appear that further aids on the

part of this state would be proper, I am persuaded they will be readily afforded.[1]

Difficulties have been experienced in importing from foreign countries sufficient quantity of arms and ammunition, and the present scarcity of those articles in general, and of one of the most essential of them in particular, is a disagreeable circumstance. It certainly is very desirable that we should not depend on foreigners for the means of defence, and therefore, that the manufactures necessary to furnish these supplies should be encouraged and patronized by the legislature.

The constitution of this state expressly directs that "a proper magazine of warlike stores, proportionate to the number of inhabitants, be forever, at the expense of this state, and by acts of the legislature, maintained and continued in every county in this state."[a]

They who formed this constitution had been taught by severe experience that the day of alarm and battle was not the best season for seeking and procuring these important stores.

Laws and regulations, however carefully devised, frequently prove defective in practice, and as the regulation of the militia pursuant to the act of congress merits constant attention, it may be useful to inquire whether experience has pointed out the necessity of any amendments which, consistently with that act, may be made in our law on this subject.[2]

There is an article in the constitution, which by admitting of two different constructions has given rise to opposite opinions, and may give occasion to disagreeable contests and embarrassments. The article I allude to is the one which ordains that the person administering the gov-

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[1] The appropriation act, chap. 57, passed April 11th, authorized the commissioners of fortifications to expend five thousand pounds upon the fortifications on Governor's, Bedlow's, and Oyster Islands.

[a] Const. 1777, § 40.

[2] Chap. 68, passed April 11th, amended the existing militia law.

ernment for the time being shall be president of the council of appointment, and have a casting voice, but no other vote; and with the advice and consent of the said council, shall appoint all the officers which the constitution directs to be appointed.[b] Whether this does by just construction assign to him the exclusive right of nomination is a question which, though not of recent date, still remains to be definitively settled. Circumstanced as I am, in relation to this question, I think it proper merely to state it, and to submit to your consideration the expediency of determining it by a declaratory act.[3]

The more the principles of government are investigated, the more it becomes apparent that those powers and those only should be annexed to each office and department which properly belong to them. If this maxim be just, the policy of uniting the office of the keeper of the great seal with that of governor, is far from being unquestionable; the powers of the former not being necessary to the latter. It seems, on general principles, more proper that important acts made or agreed to by the governor, should be validated and rendered binding on the state by an officer who did not officially participate in them, than by himself. Important cases occasionally arise, in which a competent knowledge of the law, and that kind of discretion which results from it, are necessary to decide whether the sanction of the great seal ought to be given or to be withheld; and although persons not possessed of those acquirements may administer the government very ably in other respects, yet in that respect they would be liable to commit mistakes not easy to correct.

One great object of which a people, free, enlightened

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[b] Const. 1777, § 23.

[3] The Assembly, on the 3d of February, adopted a resolution that "in the opinion of this House a declaratory act defining the powers of the Council of Appointment, or prescribing the manner in which they shall be exercised would be inexpedient." It should be noted that the discussion here initiated by Governor Jay resulted in the Constitutional Convention of 1801, and the adoption of an amendment defining the powers of the Council of Appointment.

and governed by laws of their own making, will never lose sight is, that those laws be always so judiciously applied and faithfully executed, as to secure to them the peaceable and uninterrupted enjoyment of their rights. To this end it is necessary, and sound policy certainly requires, that the dispensation of justice should invariably be committed to the men the best qualified to perform that very interesting task; with this policy the present situation of the Chancellor and of the judges of the supreme court does not appear to me to correspond. Their salaries, not being more than adequate to their current expenses, yield little or no surplus to form a provision for their families. Instead of the tranquillity, the domestic comforts and the exemption from anxious cares which sensibility claims for declining years, they must, when those years arrive, retire to private life, without having received from their country the means of enjoying it. These circumstances have no tendency to invite able and distinguished lawyers, few of whom possess ample patrimonies, to exchange their lucrative practice for seats on the bench; and yet by such men only should those seats be filled. Permit me, therefore, to submit to your consideration, whether justice, public good and the honor of the state, do not strongly recommend that some provision be made for such of these judicial officers as having long and faithfully served their country in that capacity, come to the age, at which according to an article in the constitution,[c] their commissions expire.[4]

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[c] Const. 1777, § 24.

[4] Governor Jay here seems to have intended to suggest the policy of judicial pensions. The Assembly committee which had this part of the Governor's speech under consideration reported, on the 28th of March, that "in the opinion of the committee when the act was passed for the permanent support of government, the then Legislature supposed that ample provision was made for all the officers of government, and it was not then in contemplation to settle allowances for life on any of those officers, neither in the opinion of the committee would such allowance tend to the public good. Therefore, if the salaries of those officers is insufficient it would be better to allow them an additional annual allowance to their present salaries."

A resolution was offered to reject the report for the reason that it did

There is another subject, also belonging to the judiciary department, respecting which some legislative provision has become very requisite. So great is the extent and population of the state, and so numerous and frequent are our courts, that the attorney-general cannot possibly manage all the prosecutions (existing at the same time in different counties) which demand his care and attention.[5]

It continues to be worthy of consideration how far the severe penalties prescribed by our laws in particular cases admit of mitigation; and whether certain establishments for confining, employing and reforming criminals will not immediately become indispensable.[6]

The measures which have been taken pursuant to the laws respecting the management of our affairs with certain of the Indian tribes, together with the results of those

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not conform to the views expressed by the Governor, who, it was said, "does not recommend a provision by the way of allowance for life." This resolution was defeated, and the matter was disposed of without further action by the rejection of a motion for the previous question.

The appropriation act, chap. 57, passed April 11th, made a very substantial increase in the salary of the chancellor and of the judges of the Supreme Court, thus adopting the suggestion made by the Assembly committee in the foregoing report.

Judicial pensions were provided for by a constitutional amendment adopted in 1880, but this policy was abrogated by the Constitution of 1894 as to judges elected after January 1 of that year.

[5] Chap. 8, passed February 12, 1796, created the office of Assistant Attorney-General, to be appointed by the Governor and Council of Appointment. The State was divided into seven districts, not including the county of New York, and an Assistant Attorney-General was to be appointed in each district. It was made his duty to attend the criminal courts in his district and manage and conduct all criminal prosecutions therein. The Attorney-General was to act in New York county, and it was also his duty to act in any other county when required by the Governor. Other districts were afterward created, and by subsequent statutes the name of the office of Assistant Attorney-General was changed to that of District Attorney.

[6] Governor Clinton, in 1794 and again in 1795, had recommended a modification of the Criminal Code. The consideration of this subject now renewed by Governor Jay, resulted in the enactment of chap. 30, on the 26th of March, amending the criminal law, and making provision for state prisons. The act abolished the death penalty in all cases, except treason, murder, or aiding or abetting murder, or stealing from a church. Other felonies were punishable by imprisonment for varying periods, including imprisonment for life upon a

measures, and a variety of documents on that and other subjects will be communicated and laid before you.[7]

While on the one hand we all lament the distresses occasioned by the sickness which lately prevailed in this city, it becomes us on the other to acknowledge with gratitude that divine interposition by which its extent and duration were so limited. The expenses which that uncommon and unexpected calamity made indispensable, exceed the sum assigned by law for such purposes. And the precaution which in the city of Albany it was judged prudent to take in order to prevent the inhabitants from being involved in the like calamity, demanded expenditures which yet remain to be provided for.[8] These accounts will be laid before you, together with those which respect the application of the moneys granted for the relief of the refugees from St. Domingo residing here. The situation of these unfortunate people still continues to be truly distressing, and to interest our compassion.[9]

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second conviction. This was an important modification of the act of 1788, chap. 37, which imposed the death penalty in a large number of cases. The act of 1778, chap. 19, abolished torture as a means of compelling the defendant to plead, and also required the entry of a plea of not guilty and a trial if he should stand mute when arraigned. The act of 1796 abolished whipping as a punishment for crime.

This act also made provision for two state prisons, one in New York and one in Albany, and created the office of state prison inspector, to be appointed by the Governor and Council of Appointment. The act also contained regulations concerning prison labor, and the details of prison administration.

[7] Chap. 22, passed March 4, provided for the relief of Indians who were entitled to lands in Brothertown. Chap. 39, passed April 1, contained additional provisions relative to the support of the Oneida, Onondaga and Cayuga Indians. The appropriation act, chap. 57, fixed the compensation of Indian agents and commissioners. The same act authorized the Governor to expend not exceeding two thousand pounds in effecting a treaty with the St. Regis Indians, including the compensation of the United States commissioner, and the satisfaction of certain annuities.

[8] An act, chap. 38, to prevent the bringing in and spreading of infectious diseases in this state, was passed April 1. The expenses incurred during the recent epidemics in New York and Albany were provided for by the appropriation act, chap. 57.

[9] An appropriation for the St. Domingo refugees was made by chap. 58, passed in 1794, and the expenditure of the balance of the appropriation was authorized by chap. 76, passed in 1795.

The wisdom of our laws has ordained that every place shall maintain its own poor. But it appears to me proper to remark that by the events of the desolating war between many of the European powers, and by the advantages which this country offers to emigrants, a great number of persons are induced to come to this state without other resources than what the benevolence of our citizens or other adventitious circumstances may furnish. As these people do not properly belong to any particular place in this or the neighboring states, would it not be right to consider those of them who may be real objects of charity as the poor of the state, and to provide for them accordingly.

The intimate connection that subsists between our agriculture, commerce and navigation, strongly recommends the policy of facilitating and multiplying the means of intercourse between the different parts of the state.[10] This topic embraces many others which will not escape your discernment, and which on investigation will be found to be highly interesting. Indeed the improvements of which our local situation and civil polity are susceptible, are so various as to afford you an arduous and complicated, but still not an unpleasing task. It is a task which cannot be properly performed without much time, application and well digested information, for it will always be found more difficult and also more useful to legislate well, than to legislate much.

There is reason however to expect that in the course of the session, considerable progress will be made, and

[10] Chap. 40, passed April 1, 1796, provided for improving the navigation of Hudson river between Albany and Meadow Creek, north of Troy, if the improvement could be made at an expense not exceeding four thousand pounds. The act appropriated three thousand pounds for this purpose, provided one thousand pounds should be raised by voluntary contributions. Chap. 61, passed April 11, authorized a loan of fifteen thousand pounds to the Western Inland Lock Navigation Company, and also a loan of a quantity of powder. The act required adequate security for the repayment of the money and the return of a like quantity of powder.

that the benefits resulting to our fellow-citizens from your attention to their interests, will afford additional proofs that their confidence cannot be so discreetly placed as in the wisdom and patriotism of their real and responsible representatives.

That wisdom and patriotism will, I am persuaded, give to your deliberations all the advantages which accompany moderation and concord, and you may rely on my readiness to co-operate with you in every measure for augmenting and securing to our constituents the numerous blessings they derive from the happy state of peace, liberty and safety, which by the favor of heaven we enjoy.

JOHN JAY.

New York, Jan. 6, 1796.

SPECIAL MESSAGES.

January 9. To the Senate: Transmitting a letter from the Governor of Virginia with accompanying resolutions.[11]

January 13. Thanking the Senate and Assembly for their addresses.

January 16. To the Assembly:

NEW YORK, 15*th January*, 1796.

"GENTLEMEN.—You have already been apprised that the sum granted by the act respecting infectious distempers, proved incompetent to the expenses (of which an account is preparing) occasioned by the late calamitous sickness in this city. And also that the precautions taken in Albany

[11] The Virginia resolutions recommended amendments to the federal constitution requiring the approval of the House of Representatives of any treaty containing any stipulation upon the subject of the powers vested in Congress by the 8th section of the first article; that a tribunal other than the Senate be instituted for the trial of impeachments; reorganizing the federal Senate by providing for two senators from each State to hold office three years, giving each senator one vote, dividing the Senate into three classes, so that one-third would go out of office each year; and making a United States judge ineligible to any other office.

In the Assembly a resolution was offered in substance approving the Virginia plan as to the confirmation of treaties. This was rejected, and another

against the introduction of it into that city caused expenditures which yet remain to be provided for. To the end that the Legislature may have full information on the latter subject, I now lay before you the following papers, viz. No. 1, A copy of a letter from the mayor of Albany to me. 2. A copy of my answer to it. 3. A copy of his reply, together with the 12 accounts mentioned in it. [See note 8.]

JOHN JAY."

January 18. To the Senate:

"GENTLEMEN.—Having received from the Honorable Timothy Pickering, Esquire, Secretary of State, an authenticated copy of the treaty by which the war with the Indians northwest of the Ohio has been happily terminated, I have now the satisfaction of laying it before you, together with the Secretary's letter of the twelfth instant which accompanied it.

JOHN JAY."

18th January, 1796.

January 22. To the Assembly:

"GENTLEMEN.—It being in my opinion proper that the Legislature should be accurately informed of the state of the public military stores, I now lay before you a copy of my order of the day of October to the commissary, and his report in pursuance of it dated the 17th November last.

From this report it appears that the assortment is imperfect, and the quantity insufficient. Whether it would not be advisable, that one or more secure and convenient place or places be prepared for the safe custody of the military stores of the State, and that proper persons be

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resolution declaring it improper for the Legislature to express an opinion on a question pending before the federal authorities was not considered because deemed out of order at the time of its presentation. After further discussion the Legislature adopted a concurrent resolution declaring that it did not appear expedient to concur in the Virginia resolutions.

employed to keep them in order, will doubtless receive the consideration of the Legislature.

As the government house belongs to the people of the State, it cannot be improper for me to suggest, that care should be taken to prevent its suffering from the want of necessary repairs, and of those precautions which are usually taken to preserve buildings. Whatever provision it may be judged expedient to make for this object, it is desirable that it may be under the direction of some person or persons who could have no personal inducements to lay out more money than would really be necessary and proper.

JOHN JAY.'

New York, 22d January, 1796.

January 23. To the Senate:

"GENTLEMEN.—I have now the honor of laying before you the proceedings at a treaty with the Indians, denominating themselves the Seven Nations of Canada, comprising those usually called the St. Regis Indians, held at the south end of Lake George in this State, on the twenty-sixth day of September last; together with a letter of the second instant from the agents who were appointed to attend it on the part of this State.

It appears from the above mentioned letter, that the expenses incident to the said treaty have been paid, and the accounts duly audited and passed, except the allowance to be made to the commissioner of the United States who held the said treaty, and to whom I shall direct to be paid the allowance usually made by the United States to the commissioners whom they employ for holding treaties with Indians.

The compensation due to the said agents for their services, still remains to be ascertained and ordered by the Legislature. [See note 7.]

JOHN JAY."

New York, 23d January, 1796.

January 29. To the Assembly: Transmitting a letter from the surveyor general.

February 6. To the Assembly:

"GENTLEMEN.—In compliance with your request, I have now the honor of laying before you a copy of the Adjutant General's inspection report for 1795, a return of the cavalry, a return of the artillery, and a return of the infantry of this State, together with a letter to me of the second instant, from the Adjutant General on those subjects.

The manner in which the sum appropriated by law for the relief of the refugees from St. Domingo residing here has been laid out and applied will appear from the account which (having been examined and certified by the Auditor of the State) I now lay before you. [See note 9.]

JOHN JAY."

6th February, 1796.

February 8. To the Senate:

"GENTLEMEN.—Pursuant to the request of the Council of Revision, I have the honor of laying before you a certified extract from their proceedings of the fifth instant.[12]

JOHN JAY."

February 8th, 1796.

February 8. To the Senate:

"GENTLEMEN.—Having received information that certain persons under pretence of title from a neighboring

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12 A resolution had been adopted declaring the Secretary of State *ex officio* clerk of the Council, and appointing Rinier Shaats doorkeeper and messenger. The Governor was requested to communicate the resolution to the Legislature, so that provision might be made for the compensation of these officers.

The appropriation act, chap. 57, provided for the compensation of the clerk and doorkeeper of the Council of Revision.

state to a considerable tract of country in this, were by improper practices endeavoring to draw into question the jurisdiction, and to excite opposition to the lawful authority of this state over the said tract, I referred that information to the attorney general, with directions to make further inquiries and to report to me the result. I this morning received from him a letter which together with other papers respecting this subject I have now the honor of laying before you.

It appears to me expedient as well as just, that the rights of the State be at all times maintained with firmness, and vindicated with promptitude and decision.[13]

JOHN JAY."

New York, 8th February, 1796.

February 10. To the Assembly:

"GENTLEMEN.—General Clarkson from the commissioners appointed to fortify the city and port of New York,

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[13] The Senate adopted a resolution on the 18th of February which was concurred in by the Assembly on the 20th:

"*Resolved*, That it is the sense of the Legislature, that the land within this State lately sold by the State of Connecticut, has been long since held under grants from this State, and the late colony of New York, and a great part thereof is actually settled under such grants aforesaid. That the late colony of New York, and this State, have continually exercised jurisdiction over the said tract of country from the first settlement thereof without any interruption, and without any claim by or on the part of the State of Connecticut until the late sale made by that State since the last session of the Legislature of this State.

That this State will at all times submit to the decision of the proper and constitutional court of judicature respecting any controversy with any state, or any person claiming under any state in the union; but is determined, until such decision be had, to maintain the ancient jurisdiction thereof, and to protect all the citizens and inhabitants of this State in their rights and possessions against all claims and pretences whatsoever."

On the 11th of March, the Legislature passed an act, chap. 25, "to prevent intrusions on lands within the jurisdiction of this State, under pretence of title from the State of Connecticut." It declared the Connecticut title void, and provided for removing intruders from the disputed land, which was located in Otsego, Tioga and Ontario counties.

having this morning delivered to me their report and the minutes of their proceedings together with divers plans and papers, for the purpose of being communicated to the legislature, I have now the honor of laying them before you. [See note 1.]

JOHN JAY."

New York, 10th February, 1796.

February 13. To the Senate:

"GENTLEMEN.—I have the honor of laying before you a letter from his Excellency the Governor of Virginia, proposing the annual interchange of the laws passed by that and this State respectively, and comprehending the existing code of laws in each of them.

JOHN JAY."

New York, 13th Feb., 1796.

February 15. To the Assembly:

"GENTLEMEN.—I have the honor of laying before you a letter to me from General Clarkson of this date, with a report of the commissioners appointed to procure arms.

You will also herewith receive a representation from Jeremiah Halsey, which, considering its connection with the subject of my former message relative to the opposition said to be existing to the jurisdiction and title of this State, to and over a part of its territory by certain persons claiming the same, I think should be laid before you. [See note 13.]

JOHN JAY."

New York, 15th February, 1796.

February 18. To the Assembly:

"GENTLEMEN.—After my message of the fifteenth of January last, which accompanied the papers, accounts and

vouchers respecting the expenditures made in Albany, to prevent the introduction into that city of the distemper which unhappily prevailed in this, I received an account of the expenditures of the like kind made in this city. But as the accuracy of it necessarily depended on the correctness of many others mentioned in it, I thought it advisable to postpone communicating it to you until it had been previously referred to the Auditor, and duly examined and certified by him, that having been done, I now lay it before you, together with the letter annexed to it from the gentlemen under whose immediate direction those monies were laid out, and whose attention to that interesting business has been truly exemplary.

Infectious distempers in this city cannot fail of proving in many respects injurious to the whole State, and therefore every proper measure should be taken not only to guard the introduction of them from abroad, but also to prevent as far as possible, their being generated or aggravated by local circumstances or causes.

It seems to be generally agreed that many local circumstances of that tendency do exist in this city, and that the magistrates are not authorized to establish all the regulations and take all the precautions which are necessary. These considerations urge me to recommend the subject to your serious consideration. [See note 8.]

JOHN JAY."

New York, 18th February, 1796.

February 22. To the Senate:

"GENTLEMEN.—Four Mohawk Chiefs have arrived in this city, and this morning delivered to me the letter which I have now the honor of laying before you.

Until the Legislature shall be pleased to enable me to return an answer to this application these chiefs will remain here, as they have not the means of defraying their

own expenses. I have given orders for their being provided for. [14]

JOHN JAY."

New York, 22d February, 1796.

See Special message of the 29th of March.

March 12: To the Assembly:

Objections by the Council of Revision to a bill "to authorize the raising monies by tax in the city and county of New York for defraying the public expenses." [15]

"Because the second enacting clause of the bill directs that the said several sums of money shall be rated and assessed according to the estate of each respective person so to be taxed, without affording any rule whereby the valuation thereof shall be made, or imposing any check on the discretionary exercise of this unbounded power.

Because the party taxed is left without remedy or redress against unjust or erroneous assessments, but is compelled to pay whatever sum the assessors shall direct, however exorbitant or oppressive.

The Council cannot forbear to consider a law which confers power for the misapplication or abuse of which the citizens suffering thereby can have no redress, as being inconsistent with the spirit of a free government and with the public good." [a]

March 14. To the Assembly:

"GENTLEMEN.—I have the honor of laying before the Legislature a petition of certain chiefs of the tribe of Stockbridge Indians who reside on the Oneida Reservation, which they delivered to me this morning. The expense which must be necessarily incurred by the maintenance of

[14] The appropriation act, chap. 57, provided for the expenses of the Mohawk delegates and other Indian visitors.

[15] The New York tax bill was passed over the veto, and became a law, chap. 27, on the 16th of March.

[a] Const. 1777, § 13.

them and other Indian deputies, is an additional reason for dispatching their business with as much expedition as circumstances may permit. [See note 14.]

JOHN JAY."

New York, 14th March, 1796.

March 15. The Legislature on the 22d of January, having adopted a concurrent resolution requesting the Governor to employ counsel learned in the law "to examine the cases in which suits for the recovery of dower have been brought by Sarah the widow and relict of Hugh Wallace, and Eve the widow and relict of Henry White, the estates of which Hugh and Henry were forfeited to the people of this State by their attainder, and subsequently sold agreeably to law, and that such counsel be directed to examine the cases and report with all convenient speed whether those widows are entitled to or can recover their dower or not," Governor Jay, on the 15th of March, sent to the Senate, the following communication:

"GENTLEMEN.—In pursuance of the concurrent resolution of the Hon. the Senate and the Assembly of the twenty-second day of January last, I employed counsel learned in the law, viz. Alexander Hamilton, Robert Troup and James Kent, Esqrs. to examine the cases in the said resolution mentioned, and have now the honor of laying before you their report and opinion thereupon.[16]

JOHN JAY."

New York, March 14, 1796.

March 15. To the Senate:

"GENTLEMEN.—I have the honor of laying before you an extract from the minutes of the Regents of the University of this State, together with the papers mentioned in it,

[16] The counsel appointed by the Governor made a report on the 10th of March, expressing the opinion that the act of attainder passed by the Legislature October 22, 1779, did not take away the right of dower of the wives of the persons attainted.

viz. a representation to them from the trustees of Columbia College, which I earnestly recommend to your notice and attention;[17] and a letter from one of the regents [John M'Donald] resigning his seat at that board.

JOHN JAY."

New York, March 14, 1796.

March 22. To the Assembly:

"GENTLEMEN.—Unless the affairs of government are conducted with order and punctuality they necessarily become and continue embarrassed.

This reflection urges me to submit to your consideration whether it would not be proper to direct and provide by law that all appointments to civil offices be regularly and officially notified to the persons appointed; many inconveniences result from leaving these persons without other means of information than what fortuitous circumstances occasionally afford, as well as from leaving the government to depend on the like circumstances, to be informed whether those persons consent or refuse to act, and whether any and what vacancies from time to time occur.

Whenever a person is removed from a civil office not only the person in question, but also the public should be ascertained of such removal, and it is desirable that an easy and expeditious mode of doing it be fixed by law. There are cases in which a supersedeas is not competent to these purposes.

It is said and there is reason to believe that military officers do frequently act without having taken the oaths prescribed by law. It is expedient not only that they should be enabled to take them with as little trouble and

[17] The appropriation act, chap. 57, continued existing provisions for the benefit of Columbia College, and directed the treasurer to pay specified amounts to that institution.

expense to themselves as possible; but also that the evidence of their having taken them should be such, and so circumstanced that the government may readily recur to it for information.[18]

JOHN JAY."

New York, 22d March, 1796.

March 26. To the Senate:

"GENTLEMEN.— With this message you will receive a letter to me from the Secretary of the United States for the department of war, dated the 19th instant, together with the report of the Secretary mentioned in it, on the subject of claims made by the Indians called the Seven Nations of Canada to lands in this State.[19]

JOHN JAY."

New York, 25th March, 1796.

March 26. To the Assembly:

"GENTLEMEN.— At the request of the Regents of the University of this State I have the honor of laying before you an extract from the minutes of their proceedings on the 14th instant, which I received yesterday.

JOHN JAY."

New York, 25th March, 1796.

This action by the Regents related to lands at Fort George, Ticonderoga and Crown Point, which had been vested in the Regents by the act for the further encourage-

[18] Chap. 56, passed April 8, contained provisions requiring notice to persons appointed to office, and also provisions relating to oaths of office.

[19] The Legislature adopted a concurrent resolution recommending that the State be represented at any further negotiations which might be had between the United States and the Seven Nations of Canada, for the purpose of adjusting any claim which the Indians might have upon the State. See the special message of November 2, 1796, *post*, p. 386.

ment of literature, chapter 38, passed March 31, 1790. The Regents thought they were not so vested with property in the lands as authorized them to sell or lease in perpetuity, and that the property had hitherto proved unproductive of income to the University, and would probably in future not be adequate to the purposes contemplated by the Legislature in the original grant. It was therefore recommended that the Legislature resume the grant, and that the property be sold and the avails therefrom be appropriated to such literary institutions as the Legislature might deem meet and proper.

March 28. To the Senate: Transmitting a letter from the Secretary of State with accompanying papers.

March 29. The Legislature, acting on the Governor's special message of the 22d of February, adopted the following resolutions on the 24th of March:

"*Resolved,* That his Excellency the Governor be requested to inform the Mohawk Indians, now attending on the Legislature, and claiming compensation for lands on or near the Mohawk River, that, as their claims are undefined, they have not adequate powers to make any settlement respecting the same; that measures will be taken to examine their claims and if it should appear that they are just, this State will at the next meeting of the Legislature be ready to make a settlement with such persons as may be appointed by their tribe, and duly authorized for that purpose, and that their further attendance at present is unnecessary.

Resolved, That his Excellency the Governor be requested to direct the Attorney General to examine into the claims of the said Indians, and to make report thereof to the Legislature at their next meeting; and also to appoint some proper person to collect, audit, and pay the accounts of the expenditure of the Indians now in this city during their past attendance, and to make the said Mohawk Indians such suitable presents as his Excellency may judge proper, and supply them with a sum of money sufficient to defray their expenses in returning home, for which the Legislature will make provision in their present session."

On the 29th, the Governor sent the following communication to the Senate:

"GENTLEMEN.— It appears to me that the concurrent resolution of the two houses of the Legislature of the twenty-fourth instant respecting the Mohawk Indians now in town applies only to the four who were mentioned in my message, and who as the resolution states have not adequate powers to make any settlement respecting the claims of their constituents to certain lands in this State.

But besides these four, there are two others here, viz. Aaron Henry Hill the son of Brandt, and Aaron Hill the son of Capt. David. I understand from Mr. Chapin the superintendent of the United States for Indian affairs that pursuant to the advice of one or more of the late commissioners of this State, they were deputed, and fully authorized by the Mohawks to come to this city and to treat and finally conclude of and concerning their claims to lands in this State.

These two deputies came here some weeks ago in company with the superintendent and with him went on to Philadelphia without having made any communications to me relative to the object of their deputation.

About a fortnight ago they returned here and sometimes came to me in company with the other four; but on no occasion made known to me the nature and extent either of their claims or of their authority. I learn of the superintendent that they expected their business here would be brought on by a member of the Legislature.

Under these circumstances I think it advisable to ask the direction of the Legislature, whether I am to consider the concurrent resolution as extending to these two as well as the other four.

The superintendent, with whom they expect to return, has been so obliging as to furnish me with a statement of the presents which are usually made to Indians on such

occasions; this statement including an account of their expenses will accompany this message.

JOHN JAY."

New York, 29th March, 1796.

The Legislature on the same day adopted a resolution that Aaron Hill Jr., and Henry Hill, two of the Mohawk Indians mentioned in the Governor's message, be included in the resolution of the 24th. (See note 4.)

April 2. To the Assembly:

"GENTLEMEN.—I have the honor of laying before you an address from certain chiefs of the Oneida, Tuscarora, and Stockbridge tribes of Indians, dated at the Oneida village on the 15th March last.

JOHN JAY."

New York, 2d April, 1796.

April 11. The Legislature adjourned without day.

1796. NOVEMBER. LEGISLATURE, TWENTIETH SESSION.

JOHN JAY, Governor.

FIRST MEETING.

The Legislature convened at New York on the first Tuesday, the first day of November, 1796, pursuant to chapter 32, passed at the previous session, requiring the Legislature to meet on that day for the purpose of choosing presidential electors. On the same day the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.— When it is considered how greatly the happiness of every nation de-

pends on the wisdom with which their government is administered, the occasion which has called you together at this early season cannot but be regarded as unusually important.

The period fixed for the election of a president of the United States is approaching, and the measures preparatory to it in this state are now to be taken. In every possible situation of our national affairs, whether of peace or war, of tranquillity or ferment, of prosperity or misfortune, this object will not cease to demand the utmost care and circumspection.

Hitherto the embarrassments arising from competitions, and from the influences incident to them, have not been experienced; they have been excluded by the uniform and universal confidence reposed in that illustrious patriot, who, being distinguished as the father and ornament of his country, by a series of great and disinterested services, was also eminently qualified by an uncommon assemblage of virtues and talents, for that important and exalted station.

But that extraordinary man having, with admirable wisdom and fortitude, conducted the nation through various vicissitudes and unpropitious circumstances to an unexampled degree of prosperity, is now about to retire. Mankind has not been accustomed to see the highest military and civil powers of a nation so received, used and resigned, as they have been in this glorious instance. Every reflection and sentiment connected with this interesting subject, will naturally arise in your minds. May the same benevolent, wise and over-ruling providence which has so constantly and remarkably sustained and protected us, preside over the public deliberations and suffrages.[1]

It gives me pleasure to inform you that at a treaty held in this city under the authority of the United States, a final agreement has been concluded between this state and the

[1] The journal of each House contains Washington's farewell address, but it is so easily accessible, that it need not be republished here.

Indian tribes, who call themselves the Seven Nations of Canada. Although their title to the territory they claimed was not unquestionable, yet it was judged more consistent with sound policy to extinguish their claims, and consequently their animosities, by a satisfactory settlement, than leave the state exposed to the inconveniences which always result from disputes with Indian tribes. Besides considering our strength and their comparative weakness, every appearance of taking advantage of that weakness was to be avoided.[2]

The claims of the Mohawks to certain other lands, still remain to be adjusted, but there is reason to expect that these may also be amicably settled, and that the period is not far distant, when the Indians on our borders, having convincing proofs of our justice and moderation, will by good offices and a friendly intercourse be led to rely on our benevolence and protection, and to view our prosperity as connected with their own.[3]

I submit to your consideration whether the payments to be annually made to the different tribes, who are entitled to them by contracts with the state, should not be so ordered as that they may be punctually paid in a uniform manner, and at a fixed expense.[4]

Difficulties were experienced in executing the benevolent intentions of the legislature respecting a Lazaretto in the vicinity of this city. Ground conveniently situated could not be purchased, and the placing it on Governor's Island, where it could not have been erected at a proper distance from the garrison, was liable to strong objections. These

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[2] The treaty with the Seven Nations of Canada, which is recorded in the office of the Secretary of State, bears date May 31, 1796, and extinguished the title of these nations to all lands in this State, except a tract six miles square, and also certain mill privileges, which were reserved for the St. Regis Indians, who were parties to the treaty.

[3] See special message of March 31st as to certain Indian claims.

[4] Chap. 83, passed April 1, 1797, contained regulations relating to the payment of Indian annuities.

difficulties have been removed by the liberality of the corporation of the city. They have gratuitously conveyed Bedlow's Island to the state, for this and such other public uses as the legislature may from time to time direct. Certain buildings erected there by the French republic, have been purchased, and prepared to serve the purpose of a lazaretto for the present. But as additions and alterations will be necessary, and as precautions should be taken to prevent that island from being further diminished by encroachments of the water, the appropriation of some money for these objects will be requisite.[5]

The measures prescribed by law to prevent the bringing and spreading of infectious diseases in this state have been taken and faithfully executed. It is however to be lamented, that cases of the like fever with that which in the last year proved so fatal to this city, have occurred, and there is at present very little reason to doubt whether that disease may be generated here. The subject of nuisances, therefore, having become important to the safety as well as to the comfort of our fellow citizens, well deserves the notice and interposition of the legislature.[6]

Precarious is the peace and security of that people who are not prepared to defend themselves. Permit me to observe, that this state has but one port, and that, important as it is to the whole state, its situation cannot yet be deemed secure. The fortifications that were begun are still unfinished, and it appears to me to merit consideration

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[5] Chap. 67, passed March 30, 1797, appropriated $4,500 for the erection of a lazaretto on Nutten or Governor's Island. The same act provided for the compensation of the health officer and physician for services at the temporary lazaretto on Bedlow's Island.

[6] The act to prevent the spread of infectious diseases was amended twice at this session; once by chap. 16, passed February 10th, which authorized restrictive regulations in and about the city of New York and prohibited therein certain manufactures; and the other act, chap. 57, passed March 28th, authorized licenses to continue the manufacture of soap, candles, and starch within specified limits, and under prescribed conditions.

whether this port can otherwise be secured than by skilfully fortifying the passage at the Narrows. It cannot be too frequently recollected, that seasons of peace and prosperity are the most favorable for measures and works of this kind.

Considering the fund which the state possesses, the appropriations which have been and will be made for various public uses, the accounts consequent to such appropriations, and the evident utility of so arranging and conducting our fiscal affairs as that the funds may be advantageously managed, accounts with individuals regularly settled, and the balances due to and from them punctually paid, I think it my duty to suggest whether more adequate provision for these objects should not be made.[7]

Although our taxes have for years past been inconsiderable, and although there is at present no prospect of our being pressed by any necessity to increase them, yet it is to be presumed from the vicissitudes which attend human affairs, that at some future period more ample contributions may become indispensable; would it not, therefore, be prudent, at this calm and tranquil season, to adopt and establish such rules and regulations for taxation, as being perfectly consistent with the principles of justice and rational liberty, and gradually acquiring the advantages of experience and usage, may relieve this delicate subject from many of the perplexing questions about principle, mode and manner, which at all times are difficult, and which are particularly embarrassing in times of anxiety and agitation.

The distressed situation in which the French refugees from St. Domingo arrived here, induced the legislature to provide for them in a very beneficent manner. The sums

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7 The office of Comptroller was created by chap. 21, passed February 17, 1797. The Comptroller was to perform the duties theretofore required of the Auditor; and he was also vested with additional powers and charged with other duties which were specifically prescribed in the act.

allotted for their support have been expended, and the accounts audited and settled; many of those unfortunate persons have left the state, but it is represented to me that a number of old persons and children are still here in a situation so destitute and wretched that I cannot forbear mentioning it to you. They cannot with propriety be considered as the poor of any particular district, their fate is peculiar as well as distressing, and they appear to me as having become by the dispensations of Providence the poor of the state.[8]

It often happens that persons, not urged by circumstances equally pressing, come into the state, from distant parts, and in many instances become burthensome to it. This subject seems to call for some regulations, especially as the law heretofore passed relative to it has ceased to operate.[9]

I ought not to omit informing you that the honorable Mr. King having been appointed minister plenipotentiary to the court of Great Britain, and accepted that place, his seat in the senate of the United States has become vacant.[10]

In the course of your deliberations on the affairs of the state and the means of preserving and increasing the public welfare, many interesting subjects will rise into view,— Such as these, among others: the manner in which the salt springs may be rendered most useful, and the woods in the neighborhood of them best preserved;[11] the facilities and encouragement that may be proper towards obtaining

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[8] The French refugees from St. Domingo were further provided for by chap. 6, passed January 20th, which appropriated $2,500 for this purpose, to be expended under the Governor's direction.

[9] By chap. 101, passed April 3d, the poor law was amended by requiring reports by masters of vessels bringing emigrants to New York, and also a bond indemnifying the city against any expense for the maintenance of such emigrants.

[10] The vacancy caused by the resignation of Rufus King as United States senator was filled by the appointment of John Lawrence.

[11] Provisions relating to salt springs and lands, and the manufacture of salt were contained in chap. 90, passed April 1st.

an accurate map of the whole state;[12] the necessity of rendering the laws, respecting roads and bridges more effectual;[13] and of revising and amending those which relate to the militia, and which direct the inspection of certain of our staple commodities.[14] As these and various other objects derive importance from their relations to the general welfare, they will, I am persuaded, receive a proportionate degree of your attention, and I assure you that it is no less my desire than it is my duty, to co-operate with you in guarding and promoting the prosperity and happiness of our fellow citizens.

JOHN JAY.

New York, November 1, 1796.

SPECIAL MESSAGES.

November 2. To the Senate:

"GENTLEMEN.— The facts stated in the letter to me from the Attorney-General, of the 28th of last month, which accompanies this, renders it proper that I should lay it before you.[15]

JOHN JAY."

New York, 2d November, 1796.

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[12] A State map, and also local maps and surveys, were provided for by chap. 54, passed March 28th.

[13] A general highway law was enacted, chap. 43, March 21st, which provided for a superintendent of highways in each county, for town commissioners and overseers, and prescribed detailed regulations for laying out, constructing and maintaining highways. The act provided among other things, that "all trees standing or lying on or in any land through which any public highway shall be laid out, shall be for the proper use of the owner or occupant of such land, except such of them as may be requisite to make or repair the highways or bridges on the same land." The act provided for mile posts and guide posts on certain roads.

Chap. 60, passed March 28th, proposed to establish lotteries for the purpose of constructing several great roads, specifically described in the act.

[14] The inspection laws were amended by chap. 94, passed April 3d.

[15] It appears from a concurrent resolution, adopted the second and third of November, 1796, that suits had been instituted in the Circuit Court of the

November 2. To the Assembly:

"GENTLEMEN.—I have now the honor of laying before you the agreement between this State and the Indian tribes, denominating themselves the Seven Nations of Canada, made on the 31st day of May last, at a treaty, held under the authority of the United States, in this city;[a] and also the grant from the corporation of this city to the people of the State for Bedlow's Island.

JOHN JAY."

New York, 2d November, 1796.

November 5 and 7. Thanking the Assembly and Senate respectively for their addresses.

November 11. The Legislature adjourned to meet at Albany the first Tuesday (3d) of January, 1797.

1797. JANUARY.

SECOND MEETING. ALBANY.

January 7. To the Assembly:

"GENTLEMEN.—I yesterday received a letter, dated the 27th of last month, from the representatives of this State in Congress; which, together with the papers mentioned in it, I have the honor of laying before you.

JOHN JAY."

Albany, 7th January, 1797.

United States for the district of Connecticut, claiming under a grant from the State of Connecticut for the recovery of lands lying within this State. The Governor was requested to employ counsel to aid the Attorney-General in the defense of such suits, and was authorized to expend $5,000 for this purpose, and for other charges incident to such suits. The appropriation act, chap. 104, passed April 3, included an item on this subject.

[a] See note 2.

January 13. To the Assembly: Transmitting a letter from the Surveyor General.

January 19. To the Assembly, transmitting papers on the subject of fortifying the harbor of New York.

January 21. To the Senate:

"GENTLEMEN.—I have the honor of laying before you, a report made to me by the commissioners for erecting a state prison in the city of New York, with their plan for it, and a statement of their expenditures to the 30th of November last. And also, a report made to me by the commissioners for erecting a state prison in this city; together with their plan for it which they have prepared.

Numerous facts and considerations render it highly expedient, that these buildings be completed as speedily as can conveniently be done; and to me it appears important, that such an extent of ground be allotted to each of them, as may be amply sufficient for all the various uses which institutions of this kind require, and which will naturally multiply and enlarge in proportion as our population and manufactories increase.[16]

JOHN JAY."

Albany, 21st January, 1797.

January 23. To the Assembly: Transmitting a report from the commissioners of the health office of New York, together with an account of their expenditures. (See note 5.)

February 10. To the Senate:

"GENTLEMEN.—I have lately received, and at the request of the commissioners of the land office, now lay before you, an extract from their minutes, relative to certain

[16] Chap. 12, passed February 3d, suspended the powers of the commissioners for erecting a state prison at Albany, and chap. 41, passed March 17th, made further provision for the erection of a prison in New York.

difficulties which occur in executing the act, passed the 24th March, 1795, for the relief of Nathaniel Mallory and others.

JOHN JAY."

Albany, 10th February, 1797.

February 11. To the Assembly:

Objections by the Council of Revision to a bill "for raising a further sum of money for repairing the court house and jail in the county of Herkimer." [17]

"1st. Because the mode of levying and raising the tax contemplated by the bill, contains no rule or principle by which the assessors are directed to ascertain the value of the real and personal estate to be rated by them — offers no possible redress by a revision of the assessment to the person injured; as the valuation is the mere expression of the opinion of the assessors, the accuracy or rectitude of which cannot be tested by resorting to any determinate object, in restraint of a corrupt or erroneous exertion of the powers entrusted to them — thus subjecting the estates of free citizens to the arbitrary disposition of assessors, and thereby impairing and endangering the rights of private property; the preservation whereof is among the first objects of every social contract.[b]

2d. Because the mode so prescribed in the said bill, has been discovered experimental, in many instances to operate partially, unequally and oppressively."

February 16. To the Assembly:

"GENTLEMEN.— It being important that our militia laws should from time to time receive such amendments as experience may indicate, and the laws of the United States

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[17] This bill, for repairing the courthouse and jail in Herkimer county, was passed over the veto, and became a law, chap. 30, on the 4th of March.

[b] Const. 1777, § 13.

admit, that subject will doubtless engage the attention of the Legislature in the course of the session.

I therefore lay before you a letter to me of the 7th ult. from the officers of the artillery regiment in New York, together with a copy of the letter from me, which is mentioned in it. These letters respect their situation relative to rank and promotion.

Sound policy certainly requires that the militia be organized and regulated, as far as possible, in the manner best adapted to its objects, and consequently that the arrangements relative to rank, distinctions and privileges, be governed by that essential principle.

JOHN JAY."

Albany, 16th February, 1797.

February 18. To the Senate: Transmitting a letter from the clerk of the court of exchequer.

February 18. To the Assembly:

"GENTLEMEN.—The Regents of the University, have taken into consideration the memorial of Doctor Wright Post, which on the 20th of last month, was referred to them by your honorable body, and have thereupon made the report, which I have now the honor to lay before you.[18]

JOHN JAY."

Albany, 18th February, 1797.

The following is the report:

"The Regents of the University, to whom was referred the memorial of Wright Post, professor of anatomy in Columbia College, report,

That the memorialist, about six years ago, undertook a voyage to Europe, for the express purpose of procuring

[18] The anatomical museum in Columbia College was provided for by chap. 65, passed March 30, which appropriated $500 annually for this purpose during the pleasure of the Legislature.

the materials necessary for teaching anatomy in Columbia College, upon an extensive and useful plan; that at his return he supplied the said College with a large and valuable collection of anatomical preparations; that the memorialist was at great expense in procuring the said collection; all the objects of which are of a perishable nature, and require constant attention as well as expense for their preservation; that as a comprehensive medical knowledge is of the first importance to the community, and depends on a perfect understanding of the structure and functions of the different organs composing the human body, which cannot be acquired without the aid of anatomical preparations; the exertions of the memorialist to procure the aforesaid collection for Columbia College, entitle him to the highest applause, and merit liberal encouragement.

That therefore, in the opinion of the Regents, it will be advisable for the Legislature to grant during their pleasure, to the Trustees of Columbia College, the annual sum of five hundred dollars, to be appropriated to the preservation of the anatomical museum belonging to the memorialist in the said College, and for procuring additional articles thereto, and for an allowance to the said memorialist for his services in the care and charge thereof. Provided, that all such additional articles which shall be procured with the said monies shall become the property of the said trustees, for the use of the said College."

February 20. To the Assembly: Transmitting a letter from General Clarkson, one of the commissioners for fortifying the port of New York.

February 21. To the Senate:

"GENTLEMEN.— I have the honor of laying before you a letter, of the 18th ult. from the Secretary of the United States for the department of war, enclosing a copy of the resolution of the Senate, advising and consenting to the ratification of the treaty, concluded on behalf of this state, with the Indians, calling themselves the Seven Nations of Canada. [See note 2.] JOHN JAY."

Albany, 20th February, 1797.

February 28. To the Senate:

"GENTLEMEN.—It appears by the Surveyor General's letter, which accompanies this message, that the commonwealth of Massachusetts have (doubtless by some errors in their surveys) comprehended within the lands ceded to them by this State, others which are not included in that cession. It being expedient that all questions arising from this circumstance should be amicably and speedily discussed and settled, I submit to your consideration, whether it is not advisable that the provisions necessary for that purpose, on the part of this State, should be made during the present session of the Legislature.

JOHN JAY."

Albany, 28th February, 1797.

February 28. To the Assembly:

"GENTLEMEN.—The agents, who on the part of this State concluded the agreement which has been laid before you, with the Indians called the Seven Nations of Canada, at the treaty held at New York in May last, have represented to me that William Grey, one of the deputies from those Indians at that treaty, was during the late war captivated in this State by the Indians of St. Regis; that they adopted him into that tribe, and on the 21st of March, 1781, gave him the tract of land specified in the copy of the deed from them to him, which, with a copy of the proceedings of that treaty, accompanies this message, and which he left with the said agents for your information.

That they have no reason to suppose otherwise, than that the said transaction was at the time intended, and did take place, between him and the said Indians, in good faith; that during the negotiations at the treaty, his conduct was fair and proper; and rather than that the treaty should be in the least impeded by his claims, he readily consented to waive the making of any stipulations in his

favor, and to rely entirely on the State for such compensation or gratuity as the Legislature should think reasonable.[19]

JOHN JAY."

Albany, 28th February, 1797.

March 9. To the Legislature: Transmitting the annual report of the Regents of the University.

March 10. To the Senate:

"GENTLEMEN.—Several convicts having at different times broken and escaped from the jail of the county of Albany, an inquiry has been made into the state of the jail, as well as into the conduct of the sheriff and his officers.

It appears from the affidavit of the late sheriff, which accompanies this message, as well as from other evidence, that the jail is far from being sufficient for the safe keeping of prisoners.

It is obvious that the importance of providing against the escapes of atrocious offenders is greatly increased, by the alterations lately made in our penal code; and therefore, that the jails in the several counties derive, from that consideration, additional claims to the attention of the Legislature.

Under these impressions, I think it my duty to communicate to you the beforementioned information, and to suggest the expediency of directing and enabling the county of Albany forthwith to put and keep their jail in a proper state of strength and security.

Permit me also to submit to your consideration, whether it will not be advisable to direct every sheriff in the State, whenever a prisoner charged with, or convicted of an offence, shall escape from jail, immediately to give notice

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[19] The compensation to William Grey, here suggested by the Governor, was provided for by chap. 104, which appropriated $1,000 for that purpose. See also note 2.

thereof in the public papers, and to offer a liberal reward (to be paid out of the treasury, but charged to the county) for retaking such prisoner; and also, that in cases of such escapes, it may be made the duty of the Assistant Attorney General of the district, to lay the facts before the then next Grand Jury, to the end, that they may inquire and ascertain whether and how far the sheriff was culpable.

JOHN JAY."

Albany, 10th March, 1797.

March 18. To the Assembly:

"GENTLEMEN.—I have the honor of laying before you, a letter dated the 13th inst. from the chairman of the commissioners for building a state prison in the city of New York, stating what they conceive will be the expense of finishing it. [See note 16.]

JOHN JAY."

Albany, 18th March, 1797.

The commissioners estimated that it would require an additional appropriation of twenty thousand pounds to complete the main building and twenty thousand more to execute the whole design, with five thousand pounds additional for a brick wall fourteen feet high around the grounds.

March 22. To the Assembly: Transmitting a report from the Regents, with an accompanying petition from Columbia College.

March 24. To the Senate:

"GENTLEMEN.—Four Cayuga chiefs, deputed by their tribe to make certain representations to me, are now here. Custom, founded on obvious reasons, imposes on the State

the expense attending the transaction of public affairs with Indian nations. This custom and the rites of hospitality, require that provision be made for the expenditures usual on such occasions. I therefore submit to your consideration, whether it would not be proper to authorize the agents who have been lately appointed to examine the claims of the Stockbridge Indians, to ascertain and pay the expenses proper to be incurred on account of the Chiefs which have been sent here by both tribes.[20]

JOHN JAY."

Albany, 24th March, 1797.

March 28. To the Assembly: Transmitting a letter from the mayor of New York relative to the condition of the jail in that city.

March 31. To the Senate:

"GENTLEMEN.—I have the honor of laying before you, a letter to me of this date from the agents appointed on the part of this State, relative to the claims of the Mohawk and also of the Stockbridge Indians to lands within this State.

The agreement they have concluded with the Mohawks, and their report concerning the claims of the Stockbridge Indians accompany this message.[21]

JOHN JAY."

Albany, 30th March, 1797.

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[20] The Legislature by concurrent resolution made provision for the expenses of these Cayuga Indian delegates, and they were also to be furnished clothing and transportation.

[21] The Legislature by concurrent resolution approved the agreement with the Mohawk Indians, and the report concerning the claims of the Stockbridge Indians, which documents were to be filed and recorded in the office of the Secretary of State. The appropriation act, chap. 104, made provision for the compensation and expenses of the commissioners.

March 31. To the Senate:

Objections by the Council of Revision to a bill "enabling the mayor, recorder, aldermen and commonalty of the city of Hudson, to order the raising a sum of money for the payment of a night watch."[22]

"Because the bill purports to authorize and empower the Mayor, Recorder, Aldermen and Commonalty of the city of Hudson, in Common Council convened, to order the raising a sum of money annually by tax, on the real and personal estates of the freeholders and inhabitants within the limits therein described, without prescribing the mode of assessing, levying or collecting it, which is the more necessary, as the act authorizing the present imperfect system of taxation does not comprehend a case of this description."

April 1. To the Assembly:

Objections by the Council of Revision to a bill "to enable St. John Honeywood to continue an attorney in certain cases."

"Because the said St. John Honeywood, at the time of his appointment and acceptance of the office of clerk of the county of Washington, was apprised that by a law of this state he was inhibited from practising as an attorney in any courts of which he was appointed clerk, and that he by such acceptance made his choice, and thereby relinquished his right of practising at the bar of those courts.

Counselors and attorneys may, as vacancies arise, be frequently appointed clerks of courts — should therefore this bill become a law, a precedent will be established in similar cases, to encourage a suspension of the good and beneficial effect of a law made for the wise purposes of

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[22] The bill for a night watch in Hudson was not passed over the veto, but another act on the same subject was passed, and became a law, chap. 95, on the 3d of April.

guarding against the temptations and danger of unfair practice."

The bill was not passed over the veto.

April 3. To the Assembly:

Objections by the Council of Revision to a bill "to authorize the mayor, aldermen and commonalty of the city of Albany to raise a sum of money by tax, for defraying the expense of lighting the lamps and for the support of a night watch in the said city." [23]

"Because, independent of the reasons which have been on former occasions offered by the Council against the system of taxation referred to in the said bill, and which it would now be unseasonable to repeat, the proviso in the said bill contained, that in forming the assessment, "regard shall be had to the greater or less advantage which may result to individuals from such lamps and night watch," gives a great additional latitude and new objects to the discretion of assessors.

Because, altho' the publication of accounts of the disposition of monies granted by law, may produce salutary effects, as affording a mean for the detection of any misapplication, and tending to increase a proper caution in the persons entrusted with the management thereof, yet the compelling this corporation to publish an account, not only of the receipts and expenditures of the funds derived from the grant intended to be made by the bill, but also of their own proper income, subjects the Mayor, aldermen and commonalty of the city of Albany, to a duty not imposed on other corporations in the State: the more exceptionable as it is not founded on any imputation of misconduct in the officers of that corporation."

April 3. The Legislature adjourned without day.

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[23] The Albany lighting and night watch bill was not passed over the veto, but another act on the same subject was passed, and became a law, chap. 102, on the 3d of April.

JOHN JAY, Governor.

Albany became the State capital by an act, chapter 31, passed March 10, 1797, which provided for the erection of a public building in that city for the use of the Secretary of State and Clerk of the Supreme Court, required the comptroller and treasurer to keep their offices in Albany, and the meetings of the legislature to be held there unless it was specifically adjourned to another place or convened elsewhere by the Governor.

The Legislature met at Albany on the 2d of January, 1798, at which time the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—It must afford sincere and cordial satisfaction to our fellow-citizens to see the representatives whom they have freely chosen thus peaceably and calmly assemble, to deliberate on their common concerns, and to concert the measures most conducive to their common prosperity.

Nor will they derive less satisfaction from the reflection that at this moment the representatives of the nation, of which this state constitutes an important member, are in like manner convened, and in harmony proceeding to consider and provide for our national interests.

This is an eventful and interesting period, and very important and impressive are the circumstances and considerations which render union, prudence and energy essential to the welfare, if not to the safety of the United States. May the great author and giver of good counsels, dispose and enable our governments and people to fulfill their respective duties wisely.

During the last summer, an extraordinary occasion in-

duced the President to convene the congress. Their acts and journals will be laid before you for your information. Among the acts there is one of which it is proper to make particular mention.

It is entitled "an act authorizing a detachment from the militia of the United States." By it the President is empowered to require of the executives of the respective states to take effectual measures, at such time as he shall judge necessary, to organize, arm and equip, and hold in readiness to march at a moment's warning, the proportion of eighty thousand men assigned to them respectively.

In pursuance of this act, the president has been pleased to direct that the quota of troops assigned to this state, should be held in readiness, and orders have been accordingly given, and in numerous instances have been complied with, in a manner very honorable to the militia of this state.

It will not escape your observation, gentlemen, that by this act the executives of the several states are not only to organize, but also to arm and equip the detachments required of them. When on this, or any future occasion, such detachments shall be called to the field, it is not to be expected that they will be found completely armed and equipped. There will doubtless be deficiencies, and to me it appears proper that the necessary supplies should be seasonably provided, and that they be managed in the manner best calculated to guard against waste and misapplication.

On reviewing the internal affairs of the state, you will I think, find it necessary to amend some of our existing statutes.

The act making alterations in the criminal law, and substituting the punishment of imprisonment instead of death for certain felonies, appears to me to have omitted either expressly to declare, or impliedly to decide, whether in

any and what respects the convictions in those cases extinguish or affect civil rights and relations.[1]

The restriction in the act respecting assistant attorneys general, which limits the appointments to counselors at law resident in the respective districts, has been and still is in one of the districts productive of inconvenience and embarrassment.[2]

The laws respecting quit rents might in my opinion be amended by a provision enabling the holders of land subject to it, to acquire at any time an exoneration from that charge, on just and reasonable terms.[3] To me it appears advisable, that the proprietors of land throughout the state, should, by the gradual operation of such a provision, be eventually placed in this respect on a similar and equal footing.

Imperfections in the militia laws are frequently experienced, and the relation which this subject bears in the defense of the nation in general, and of this state in particular, places it in an interesting point of light. The maxim that every nation ought to be constantly prepared for self-defence, is founded on the experience of all ages; it is true at all times, and under all circumstances; it is by the constitution of the state expressly recognized and adopted, and in strong terms enjoined as a duty on the legislature.* It deserves, therefore, to be considered whether the provisions made by the existing laws for this object, are sufficiently ample and adequate.

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[1] Answering this suggestion as to the effect of punishments in certain cases, the Legislature at the next session, by chap. 57, passed March 29, 1799, enacted that a person sentenced to imprisonment for life should be deemed civilly dead.

[2] Chap. 1, passed January 8, 1798, annexed New York county, so far as proceedings in the Court of General Sessions were concerned, to the district composed of the counties of Suffolk, Queens, Kings, Richmond, and Westchester.

[3] The Governor's suggestion as to quit rents was incorporated in chap. 33, passed March 16.

* Const. 1777, § 40.

Under color and cover of the act for defraying county charges, taxes are often so unequally assessed on unimproved woodland, and with such inexcusable waste and destruction collected, as to require legislative interposition. Every system of taxation is certainly defective and exceptionable, which does not afford the best checks which human prudence and human laws can devise, against partiality, fraud and oppression. That government cannot cease to attract and to preserve confidence and attachment which leaves no rights without protection, no grievances without redress.

It is considered as a rule to which there are few exceptions, that when a law is treated with manifest and general disrespect and disobedience, it should either be repealed, or more competent means to enforce it be devised; a tolerated violation of one law naturally leading to, and encouraging the infraction of others.

Although the obligation to observe and obey equal and constitutional laws plainly results from our social compacts, and makes a part of the moral law, yet the statute prohibiting usury and limiting the interest of money, is notoriously and daily violated, and that, not only by those on whom such considerations have little influence, but even by too many of those whose characters and conduct are in other respects fair and correct.

There is also much reason to regret that more respect is not generally paid to the injunctions of the act relative to Sunday. If the Sabbath be, as I am convinced it is, of divine appointment, this subject ought not to be regarded with indifference.[4]

In a state so progressive as ours, new cases and exigencies will frequently arise, and require legislative provision.

At least two arsenals for the reception and safe keeping of military stores are thought to be necessary, one at

[4] Chap. 82, passed April 3, prohibited the sale of liquor on Sunday.

New York and another at this place.[5] For the one at New York, the corporation of that city have liberally and gratuitously granted to the people of the state a large, and valuable lot of ground, and the commissioners have my approbation to erect an arsenal on it.

The situation of Albany, considered in relation to the other counties, to security and to the facility of transportation by land and water, seems to point it out as a proper place for an arsenal, and on a larger scale than the one proposed for New York. If these ideas should meet with your approbation, the means of realizing them will of course be attended to.

The value and importance of the military stores which will from time to time belong to the state, require that they should be well preserved, and also securely kept. Both these considerations unite in suggesting whether these purposes can be so properly and economically effected as by a competent number of guards, carefully selected, organized and regulated. The utility of this measure becomes more apparent on considering that it may be made subservient not only to the security and business of the arsenal, but also to the security of the state prison; every escape from which, however caused, will in a degree counteract the purposes of that benevolent institution. Sound policy dictates that our present mild punishments should be made to produce by their certainty and duration, a portion of that dread which sanguinary ones impress by their severity.

I forbear, gentlemen, to press your attention to the great interests of learning, public justice, agriculture and commerce, being persuaded that nothing will be omitted to

[5] An arsenal in New York was provided for by chap. 66, passed March 30, which appropriated $3,000 for this purpose to be expended under the Governor's direction.

render the session useful to our fellow-citizens and honorable to their representatives.

JOHN JAY.

Albany, January 2, 1798.

SPECIAL MESSAGES.

January 2. To the Assembly:

Objections by the Council of Revision to a bill, passed at the last session, "to vest certain powers in the freeholders and inhabitants of the villages of Troy and Lansingburgh, and for other purposes therein mentioned." [6]

"Because the proportion according to which the taxes provided by the bill to be raised within the several villages of Lansingburgh and Troy, are to be assessed on the freeholders and inhabitants, is to be their respective relative property or ability; and these terms property and ability, being of too various and indefinite import to designate or describe, with due certainty, the things, considerations or other matters for which a person is to be assessed or taxed, the proportion supposed by the bill must remain equally uncertain, and the assessors, in apportioning the tax among the several persons by whom it is to be borne, will, in effect, be left to their absolute discretion, for want of a rule to guide or control them, and may even suppose themselves authorized to assess a greater proportion or quota on a person in consideration of a property in lands not within the limits of the village, and no mean to detect or correct the abuse; it therefore appears improper to the Council that a bill so defective in a part so material should become a law."

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[6] The Troy and Lansingburgh bill was passed over the veto, and became a law, chap. 14, on the 16th of February.

January 2. To the Assembly:

Objections by the Council of Revision to a bill passed at last session "further to amend the act entitled 'An act to organize the militia of this State."

"Because the clause in the bill which authorizes any forty of the enrolled and un-uniformed militia of a regiment to form themselves, by voluntary association, with the approbation of the commanding officer of the brigade, into a company, will probably tend to introduce and perpetuate dissensions in regiments, promote disorganization, and subvert subordination.

Because the bill contemplates the forming additional companies in regiments already divided into beats, and authorizes the commanding officer of the regiment to assign the officers to such additional companies from those of the regiment — Thus not authorizing the commanding officers of regiments to exact from the officers so assigned additional duties *ex officio,* but by devolving upon them a right of making permanent appointments, which virtually avoid those made in the mode pointed out by the Constitution, causing vacancies in the several beats from which the officers so assigned are taken, which vacancies must of necessity for the purpose of preserving the organization prescribed by the existing militia law, be filled in the usual constitutional mode.[a]

Because the general policy of military arrangements, combined with the consideration, that it is a power vested by the existing militia law, requires, that all the subordinate commands should be ascertained and controlled by the commander-in-chief; who from his situation and means of acquiring information respecting the expediency of such arrangements, is more competent to direct them."

The bill was not passed over the veto.

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[a] Const. 1777, §§ 23, 24.

January 6. To the Senate:

"GENTLEMEN.—The great seal of the state has become so much worn and impaired, that it is doubtful whether it would be more advisable to endeavor to repair it, or to have a new one made; not being authorized to place it in the hands of any artists, for either purpose, I give this information to the Legislature, that such measures may be adopted as to them shall appear most proper.[7]

JOHN JAY."

Albany, January 6, 1798.

January 6 and 8. Thanking the Assembly and Senate respectively for their addresses.

January 10. To the Assembly: Transmitting a letter from the Attorney General relative to two suits in the Circuit Court of the United States for the District of Connecticut, involving the title to lands in this State claimed under grants from Connecticut. The Attorney General suggested that the supreme court ought to have power to change the venue in cases of this character, and also suggested that the Legislature fix the sums which might be allowed witnesses as compensation, in addition to their expenses.[8]

January 23. To the Senate:

"GENTLEMEN.—The Commissioners for investigating the Onondaga titles, have made to me a statement of their proceedings; and also of certain circumstances, which requiring supplementary provisions, I think it my duty to

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7 Chap. 6, passed January 26, authorized the Comptroller, Surveyor-General and Attorney-General to repair the existing great seal or make a new one.

8 The Legislature adopted a concurrent resolution requesting Congress to enact a law providing for the removal of causes involving controversies between states, or a change of venue which would insure the trial by a jury not composed of citizens of either of the contending states, and the Governor was requested to transmit the resolution to New York's senators and representatives in Congress. See Special Message of March 24.

submit to your consideration by laying their letter of the 22d instant before you.[9]

JOHN JAY."

Albany, 23d January, 1798.

January 23. To the Assembly:

"GENTLEMEN.—I yesterday received, and now take the earliest opportunity of laying before you, a report from the Commissioners for erecting a State Prison in the city of New York. That the late benevolent alterations in the criminal law of this State may have a fair and full trial, it appears to me indispensable that the State Prison be speedily and completely finished.[10]

JOHN JAY."

Albany, January 23d, 1798.

January 25. To the Assembly:

"GENTLEMEN.—The sum of money appropriated by the Legislature the last year for the support of the French refugees from St. Domingo, residing in the city of New York, being nearly expended, I think it my duty to apprize you of this circumstance, and submit to your consideration the propriety of making a further and seasonable provision for those unfortunate individuals.

As the most recent information I have on this subject, is derived principally from a letter of the 16th inst. from Mr. Richard Lawrence, the agent by whom the supplies to these sufferers are distributed, a copy of that letter will accompany this message.

JOHN JAY."

Albany, 25th January, 1798.

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[9] The Onondaga county land titles act of 1797 was amended by chap. 12, passed February 12, by authorizing commissions to procure the testimony of non-resident witnesses. The act of 1797 was sustained in Jackson ex dem. Lepper v. Griswold (1809), 5 Johns. 139; Barker v. Jackson (1826), 1 Paine, 559, Fed. Cas. No. 989; Jackson ex dem. Hart v. Lamphire (1830), 3 Pet. 280.

[10] Chap. 56, passed March 30, appropriated $71,346 for completing the New York prison.

January 26. To the Assembly:

Objections by the Council of Revision to a bill "for the relief of Anna Breadbake." [11]

"Because the grant intended by the bill, is not founded on that official inquiry which has been devised for the wise purposes of preventing oppression on the citizen and imposition in directing public benevolence, and contains neither a description of the value, extent or duration of the estate alleged to have escheated to the people of this State; thus establishing a precedent which in process of time may become dangerous in practice to the interests of the community.

Because the grant is not limited to the estate whereof John Breadbake died seized or possessed; thus affording color for a construction repugnant to that salutary principle of the common law that a mere right is incapable of being transferred by grant.

Because the bill purports to grant all the right and title of the said people of, in and to all the estate of the said John Breadbake to Ann his widow her heirs and assigns forever, tho' it does not appear from the said bill that the said John Breadbake held any estate of inheritance; thus rendering the said grant uncertain as to its object, and perhaps discordant in its application to the estate which is the subject matter of the said bill."

January 31. To the Assembly: Transmitting papers received from the Attorney General relative to the lands in this State claimed under grants from Connecticut.[12]

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[11] The bill for the relief of Anna Breadbake was not passed over the veto, but a statute on the same subject was passed, chap. 67, and became a law March 31.

[12] Chap. 15, passed February 28, 1800, appointed commissioners to represent New York in the settlement of the Connecticut controversy.

These papers include

1. The following letter from commissioners authorized to settle the Connecticut controversy.

January 6, 1798.

SIR.—The Legislature of the State of Connecticut, has empowered the Governor to execute and deliver to the State of New York a deed of release of the juridical power of the former, to certain lands called the Connecticut Gore, when application shall be made for the same, by the proprietors, or grantees of that territory. We have the honor to inclose you a copy of the act.

The grantees under Connecticut, claiming to be proprietors of that territory, impressed with an idea that the State of New York have no wish to continue a legal controversy, if justice may be as well done without it, have appointed us as commissioners and agents, to treat with commissioners or agents from the State of New York on this business. A copy of that appointment is also transmitted.

Conceiving that there is a probability that a negotiation may do justice to the parties, and prevent further expensive litigations, we undertake the business; and have the honor to inform you, that we shall be ready to meet agents from the State of New York, at any time and place which may be proposed for an interview.

The intention of our constituents is easily discerned from the acts of which we inclose copies. And we shall rely upon it, that if a meeting is proposed by agents duly appointed by the State of New York, it will be done, under an idea of a speedy and honorable adjustment of the controversy.

We have the honor to be, with respect,
Your most humble servants,
JAMES SULLIVAN,
ALEX. WOLCOTT,
JAMES WADSWORTH.

Mr. HOFFMAN, Attorney General
of the State of New York.

2. A resolution adopted by the Connecticut General Assembly on the 12th of October, 1797, that upon the settlement of the controversy by such proprietors, the Governor of Connecticut be requested to execute a releas of Connecticut's right to the disputed territory, such release to run to the State of New York, or to persons authorized by it to receive the same, and to be executed only upon the previous consent of Congress.

3. A power of attorney from the Connecticut proprietors to the above named commissioners, authorizing them to settle the controversy.

February 1. To the Senate:

"GENTLEMEN.—Some of the chiefs of the Onondaga tribe of Indians have arrived here, and were deputed to remonstrate against certain intrusions on their lands, and to ascertain the truth of a report which had given alarm and uneasiness to the tribe. The number of Indians who compose, or are attached to this deputation, is thirteen. The business on which they came has been dispatched with as much expedition as their deliberate and customary manner of proceeding would permit; nothing remains to retard their return, but a provision for the expenses, which, for more than a century past, have been considered as necessary and proper on such occasions.[13]

JOHN JAY."

Albany, 1st February, 1798.

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[13] The appropriation act, chap. 68, passed March 31, 1798, made provision for expenses incurred in entertaining Indian deputations during the session. Chap. 29, passed March 9, in response to the suggestion contained in the Governor's Special Message of February 14th, authorized the expenditure of not more than $1,000 annually for three years, for the entertainment of Indians visiting the seat of government on necessary public business. The Governor was authorized to appoint a person to take charge of such entertainment.

February 2. To the Senate:

Objections by the Council of Revision to a bill "authorizing the use of paper instead of parchment in certain legal proceedings." [14]

"1st. Because a practice sanctioned by the usage of ages furnishes such a presumption in its favor, as to render any change improper except on the most obvious utility, and it does not appear that any advantage to the public will result or is expected from the change in question.

2dly. Because, unless parchment should, contrary to long and general opinion and experience, be deemed a more proper material for records than paper, the change on that principle cannot be necessary, and the expediency of it is rendered at least very doubtful by the consideration that parchment to a considerable and increasing amount, is manufactured in the country, and value thereby given to a raw material, otherwise of little worth."

February 8. To the Assembly:

"GENTLEMEN.— The Secretary of State, pursuant to an act of the Congress of the United States, has transmitted to me four hundred and twenty-three copies of the laws of the United States, for the use of this State. I do not conceive myself authorized to make any distribution of these laws, and therefore lay before you the two letters (of 15th August and 2d December last) which I have received from the Secretary of State on this subject, that these laws may be disposed of in the manner which the Legislature shall be pleased to indicate.[15]

JOHN JAY."

Albany, February 8th, 1798.

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[14] This bill, authorizing the use of paper in legal proceedings, was passed over the veto and became a law, chap. 8, on the 5th of February.

[15] The Legislature adopted a resolution on the 29th of March, directing the distribution of these laws to various state and local officers, according to a prescribed apportionment.

February 13. To the Senate:

"GENTLEMEN.—Two of the superintendents of highways in the county of Westchester have in a letter dated the seventh of this month, stated to me certain embarrassments which have impeded the execution of the duties imposed upon them by law; and as in my opinion the facts they mention merit attention, it appears to me proper to lay their letter before you.[16]

JOHN JAY."

Albany, 13th February, 1798.

February 14. To the Assembly:

"GENTLEMEN.—Two chiefs of the Tuscarora tribe of Indians arrived here yesterday on their way to Philadelphia. They are deputed by their tribe to wait on the President of the United States, and to submit to him certain matters, of which mention is made in the paper which accompanies this message, and which I communicate for your information.

They represent to me that their expenses on the road have exceeded their expectations, and solicit pecuniary aid to enable them to prosecute their journey. Applications of this kind are from time to time to be expected. The Indians being hospitable themselves, naturally expect hospitality from others, especially from this State, whose early and uniform professions, and conduct towards them, leave them no reason to question it. I doubt the propriety of frequent messages of this nature, and therefore submit to your consideration whether it would not be advisable to authorize some person resident in this city, and well acquainted with the former and accustomed manner of receiving and entertaining Indians on such occasions, to make such provision for these and similar visitants, as may be

[16] The general highway law was amended in several particulars by chap. 35, passed March 16.

conformable to the long established usage of the State in these respects. [See note 13.]

JOHN JAY."

Albany, 14th February, 1798.

February 15. To the Senate:

"GENTLEMEN.—The reasons communicated by the Surveyor General (in his letter herewith laid before you) for directing a survey to be made of the tract reserved to the state on the river Niagara, induce me to recommend that measure to your consideration.[17]

JOHN JAY."

Albany, 15th February, 1798.

February 22. To the Senate:

"GENTLEMEN.—I think it my duty to lay before you, a petition and a number of affidavits, from which it appears, that in the town of Livingston, combinations of disorderly persons have been formed, to obstruct the course of justice, and by force to exclude certain proprietors from the possession of lands which have been adjudged to them by the courts and laws of the land; that the service of legal process is frequently and violently resisted; and that the sheriff and his deputies have in the discharge of their official duties, been opposed in a manner, and to a degree very offensive to justice and subversive of good order. The first and obvious principles and objects of civil society, certainly demand, that individual citizens be, without partiality, protected in the enjoyment of their property and other rights; and the honor and dignity of the State require, that the authority of its laws be maintained, and the respect due its government preserved.

These circumstances and reflections induce me to recommend to your consideration, whether such extraordinary

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[17] Lands adjacent to the Niagara river were to be surveyed by the Surveyor-General under chap. 73, passed April 2.

and daring combinations do not call for more prompt and efficacious means of repressing them than our laws at present afford.[18]

JOHN JAY."

Albany, 22d February, 1798.

February 22. To the Assembly:

"GENTLEMEN.— The chiefs of the Oneida tribe of Indians have come to this place with a view to dispose of a part of the lands reserved to them. It will in my opinion be expedient that proper persons be authorized to manage this business with them on the part of the State.[19]

JOHN JAY."

Albany, 22d February, 1798.

March 3. To the Assembly:

"GENTLEMEN.— In pursuance of the act for that purpose lately passed, I appointed commissioners to confer with the Oneida Chiefs respecting the lands which their tribe desire to sell.

On comparing the act with the report which the commissioners have made to me, and of which a copy accompanies this message; I presume it will appear that further legislative direction and authority will be necessary in case it should be deemed advisable to accept the terms and proposals of these Indians. [See note 19.]

JOHN JAY."

Albany, March 3d, 1798.

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[18] A concurrent resolution was adopted on the 24th of February, requesting the Governor to cause the laws to be enforced in the town of Livingston, and if necessary to call out the militia for that purpose.

[19] Chap. 23, passed February 26, provided for the appointment of commissioners to treat with the Oneida Indians for the purchase of part of their lands. See Special Message of March 3d.

The Legislature, on the 5th of March, adopted a concurrent resolution authorizing the Governor to accept the proposal for the purchase of Oneida land. The appropriation act, chap. 68, made provision for the compensation of the commissioners, and for the purchase price of the land.

March 5. To the Assembly:

"GENTLEMEN.—I herewith lay before you a letter from the Commissioners named in the act for authorizing the erecting of fortifications within this State. It appears to me to deserve consideration, whether it would not be expedient to commit the business of the fortifications, and of the arsenals, and of providing arms and ammunition, to one set of commissioners, rather than to three.[20]

JOHN JAY."

Albany, March 5th, 1798.

March 13. To the Legislature: Transmitting the annual report of the Regents of the University.

March 13. To the Senate:

"GENTLEMEN.—In pursuance of the 'act for the support of the St. Domingo French refugees in the city of New York,' I now lay before you a statement and account of the monies expended for their use by Mr. Richard Lawrence the agent who has been employed for that purpose.

The distressed situation of those unfortunate refugees being known to the Legislature, it cannot be necessary nor delicate to press their attention to considerations which their own humanity and benevolence will naturally suggest.

JOHN JAY."

Albany, 13th March, 1798.

March 21. To the Assembly:

"GENTLEMEN.—In pursuance of your resolution of the 19th instant, I have taken measures to be informed of the present intentions of the government of the United States relative to putting the city and port of New York in a re-

[20] The Legislature, on the 19th of March, requested the Governor to furnish information respecting the expense of putting the city and port of New York in a respectable state of defence, and whether there was reason to expect the co-operation of the government of the United States in defraying the expense attending this object. See Special Messages of March 21 and April 5.

spectable state of defence. On receiving that information, it shall be immediately communicated to you.

As the constitution of the United States has committed to our national government the power, and the means, and the duty of providing for the national defence, it is to be expected as well as hoped that due attention will be paid to the security of a city and port so obviously and essentially important not only to this State, but to the United States.

But at this juncture, when prudence forbids delay, it, in my opinion, deserves to be considered, whether it would be advisable for the Legislature to adjourn until they see this great object provided for; and whether existing circumstances do not justify a confidence, that the United States will cheerfully assume the expense of such judicious measures as this State may take for that purpose.

Urgent considerations also recommend, that our supply of arms and stores be seasonably augmented and made ample; and that no time be lost in perfecting those military arrangements and establishments, to which menacing circumstances admonish us to attend. On these subjects the Legislature already possess much information, and I expect soon to furnish you with additional details. At present, it may be proper to observe, that, according to an estimate made the last year, about sixty thousand dollars will be necessary to finish the fortifications on the three islands in the harbor of New York. [See note 20.]

JOHN JAY."

Albany, March 21, 1798.

March 23. To the Senate:

"GENTLEMEN.—I have the honor of laying before you, an act of the Congress of the United States, whereby provision is made for building a light house on Eaton's Neck, as soon as the jurisdiction of the land necessary for the

purpose, shall be ceded to the United States, together with a letter of the 16th inst. from the Secretary of the Treasury on that subject.[21]

JOHN JAY."

Albany, 23d March, 1798.

March 23. To the Assembly:

Objections by the Council of Revision to a bill "repealing an act entitled 'An act for granting and securing to John Fitch, the sole right and advantage of making and employing the steamboat by him lately invented, and for other purposes."[22]

"Because the grant of the privileges to Robert R. Livingston, intended by the bill, supposes that the similar privileges which were granted to John Fitch, by the act thereby to be repealed, had become forfeited; Whereas it doth not appear that the facts from which such forfeiture is to arise, have been found in some due course of law."

March 24. To the Assembly:

"GENTLEMEN.—From the letter herewith laid before you, it appears that the bill lately depending in one of the Houses of Congress, for securing to contending claimants, under different States, an impartial trial, has been rejected.

On this subject, I forbear to enlarge, lest sentiments or expressions, not favorable to the mutual confidence which ought to subsist between this State and the National Government, and which it is the duty and interest of both to cultivate, should escape me.

This subject, however, demands your serious consideration; and though deeply impressed with the importance of

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[21] Chap. 112, passed April 6, ceded to the United States land for a light house at Eaton's Neck near Huntington Bay on Long Island.

[22] The Fitch steamboat repealing bill was passed over the veto, and became a law, chap. 55, on the 27th of March.

National Union at all times, and particularly at this interesting and critical period, yet I cannot omit observing, that the respect due to the dignity and just rights of this State, merits undeviating attention. [See note 8.]

JOHN JAY."

Albany, March 24, 1798.

March 26. To the Senate:

"GENTLEMEN.—A letter of the 15th instant from the Secretary of State, will accompany this message. The like motive of benevolence and humanity which interest him in favor of the Indians mentioned in it, will doubtless engage the attention of the Legislature to the measure which he recommends to be taken for their benefit.

It also appears to me proper to lay before you letters of the 19th instant, from the Secretary of War, requesting a loan of thirty pieces of cannon. To this application I shall return such answer as the Legislature may be pleased to direct.[23]

JOHN JAY."

Albany, 26th March, 1798.

March 31. To the Assembly:

Objections by the Council of Revision to a bill "to amend an act entitled 'An act for suppressing immorality.'"[24]

"Because it enacts that no conviction or adjudication, which shall hereafter be had under it, shall be liable to be removed by certiorari into the Supreme Court, but shall be deemed and taken to be final to all intents and purposes

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[23] On the 6th of April the Assembly concurred in a resolution previously adopted by the Senate, authorizing the Governor to lend thirty cannon to the United States.

[24] This bill, amending the act of 1788 for suppressing immorality, was passed over the veto, and became a law, chap. 82, on the 3d of April.

whatever; thereby, in respect to such convictions or adjudications, causing that transcendent power of the Supreme Court, which hath always been considered as inherent in it, and as indispensable for preserving order, and restraining and preventing usurpation and oppression, the power to keep all inferior jurisdictions within the bounds of their authority, to cease; and although in merely regulating the right of appeal, mischiefs, even inconsiderable or remote, may be admitted as meriting notice and estimation; yet that it ought not, without the most clear and urgent reasons of necessity, to be wholly taken away in any case, or be restricted from being pursued to the Court in the last resort."

April 3. To the Assembly:

Objections by the Council of Revision to several bills as follows:

"The Council find themselves constrained by the same reasons and principles which on various preceding occasions compelled them to object to former tax bills, to consider it as improper that the following bills should become laws of this State, to wit, the bill entitled 'An act to raise a sum of money to finish and repair the court house and jail in Queen's County,' the bill entitled 'An act to authorize the raising a sum of money for making certain necessary accommodations for the jail, and certain repairs for the court house in the County of Rensselaer,' the bill entitled 'An act to raise a sum of money for building a court house and jail in Delaware County, and for other purposes therein mentioned,' and the bill entitled, 'An act for building a court house and jail in the county of Schoharie.' Being convinced that the spirit of our constitution and of every free government demands that the citizens should be taxed by fixed rules, and not at the discretion of any indi-

vidual, they think it their duty to reiterate their former objections."[b] [25]

April 5. To the Assembly:

"GENTLEMEN.—By your resolution of the 19th of March, you were pleased to request me to cause to be laid before you an estimate of the sums necessary, and means to be adopted for putting the city and port of New York in a respectable state of defence, and to inform you whether there be grounds to expect the co-operation of the government of the United States in defraying the expense attending that object. My message of the 21st of March afforded reason to expect further communications from me on this subject, and it appears to me proper that before the adjournment of the Legislature, you should be particularly informed of the measures which have been taken for the purpose, and of the result of them.

As the act of 1794 has entrusted and committed the business of fortifying the port of New York to the exclusive management and discretion of the seven commissioners appointed in it by name, and not being authorized either officially or otherwise to participate in the direction of it, I understood your request to intend only, that I should obtain from them, and lay before you the desired information; that this might be done in the most ample and satisfactory manner, I did by a letter written on the 20th of March, and inclosing a copy of your resolution, request Col. Stevens to come here immediately, and bring with him the necessary documents, for although they had heretofore communicated to me their plans and estimates, yet none of their papers remained in my possession, and I had reason to believe that those documents together with the information to be obtained from him, and from the other honorable

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[b] Const. 1777, § 13.

[25] These bills were all passed over the veto, and became respectively, chaps. 83 (Queens), 85 (Rensselaer), 86 (Delaware), and 84 (Schoharie).

and well informed commissioner, who during the session has been in his place in the Senate, would give you full and satisfactory intelligence on the subject.

That letter, of which a copy is herewith laid before you, was sent by the next post, but before it arrived at New York, I understand Col. Stevens had set out for Philadelphia.

As to that part of your resolution which requested me to inform you whether there be grounds to expect the cooperation of the government of the United States in defraying the expense attending the object in question, I did, on the 20th of March, write letters on the subject to the Secretary at War, and to the Secretary of State, copies of which are herewith laid before you. From the Secretary of State I have since received a letter, of which I also lay a copy before you. From the Secretary at War I have not as yet received an answer. [See note 20.]

JOHN JAY."

Albany, April 5th, 1798.

April 6. To the Assembly: Transmitting a letter from the Secretary of War, dated the 28th of March, and the report mentioned in it.

April 6. To the Assembly:

Objections by the Council of Revision to a bill "to authorize the raising a sum of money to repair the court house and jail in the county of Columbia."

The objections were based upon the same reasons which had been assigned by the Council against several other tax bills.[26]

April 6. The Legislature adjourned without day.

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[26] This bill, relating to a court house and jail in Columbia county, was passed over the veto, and became a law, chap. 110, on the 6th of April.

JOHN JAY, Governor.

FIRST MEETING.

Governor Jay issued a proclamation on the 2d of July, convening the Legislature at Albany on the 9th of August, at which time he delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—Perceiving the various objections which opposed the holding a special session of the Legislature, and particularly at this season of the year, it was not until after very mature reflection, that I became convinced that it was my duty to convene you. The reasons on which this opinion was founded, have been made known; and subsequent events have not diminished their force. Our national affairs in relation to France, had, since the last session, assumed an aspect so serious and alarming, as to induce the government of the United States to communicate to the public, the information contained in the state papers which will be laid before you; and thereby to apprise the nation of the dangers which demanded immediate attention to their defence and security. Although aware that this great business belonged to the national government, yet how far the safety and essential interests of this State required that auxiliary and correspondent measures on her part should be taken without delay, was a question more proper for you than for me to consider and decide; and that it might without loss of time be submitted to your consideration, a special session was indispensable.

From the disinterested and friendly attentions early and

repeatedly paid to the government of the French Republic; and particularly in not only recognizing its independence and authority at a delicate crisis; but also in paying to it, before all the stipulated periods had arrived, the whole debt contracted under the monarchy, the United States had reason to expect that the most scrupulous regard would have been shown by that Republic, to all the rights which belonged to their independent, pacific and neutral situation. But these expectations, however rational, proved to be delusive. The rulers of that Republic immediately endeavored to take undue advantage of this friendly disposition, and did not hesitate to practise improper arts, and to make overbearing attempts to involve us in their wars, and for their objects; and that without any regard to the state of peace and tranquillity with which Providence had blessed us, and which it was not less our duty than our interest to preserve and maintain, until reasons the most cogent and indispensable should render a recurrence to arms necessary and justifiable.

It is remarkable that from the arrival of the first minister sent here by that Republic, their conduct towards us has been constantly becoming more and more disrespectful, offensive and inimical; notwithstanding the sincere and conciliatory overtures made to them by the United States. Two legations sent to them with ample powers and instructions to propose, and even to request an amicable discussion and settlement of differences, have been treated and repelled in a manner repugnant to justice and decorum; and the late very reprehensible and disgusting demands which have been made, leave no room for us to believe or hope that peace with the United States is among the objects of the present Directory. The intrigues and violence by which several European republics have been subjugated and impoverished, and by which the peace and neutral rights of other unoffending nations continue to be disturbed and violated, cast light on the designs and views

of France in their treatment of this country. They unite in admonishing us to guard against that system of deception, domination and rapine, which embracing both Europe and America, will, with respect to the latter, be still more decidedly manifested in case the Directory should acquire a preponderancy on the ocean[1]

Very wisely therefore has the government of the United States called upon the nation to prepare for defence, and very incumbent it is on every State, and on every citizen, to co-operate in providing for the general security. Whether any and what measures conducive to that end, should now be adopted by this state, is a subject which deserves your serious consideration. It is a question which comprehends several interesting objects. The defence of our port, respecting which some papers will be laid before you,[2] the defects of the militia laws,[3] the want of arsenals, and of sundry articles of military stores, and of appropriated funds for contingent military services are with others of the like kind worthy of attention.

While security is in question, the expense of providing for it is a secondary consideration. The objects before mentioned cannot be accomplished without more expense than the United States can seasonably and fully provide for. I am apprised of the state of our Treasury; and that it has been greatly exhausted by appropriations heretofore made by the Legislature; but as on the one hand, no money can be taken from it without legislative authority, so on the other it can only be replenished by such means as may be prescribed by law. It is to be regretted that too many of our citizens seem to have inadvertently

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[1] See *post*, p. 442, for a note on the relations between the United States and France.

[2] Chap. 5, passed August 27, 1798, appropriated $150,000 to be expended by the Governor in repairing or constructing fortifications in and about the city of New York. The same act appropriated $165,000 for the erection of an arsenal, the purchase of arms and artillery, and military stores.

[3] The militia law was amended by chap. 71, passed March 30, 1799.

flattered themselves, that, unlike all other people past and present, they were to live exempt from taxes. To the influence of this error it is owing that the State is at this moment in debt, and paying interest for money which in my opinion, it would have been more wise to have collected by a tax, than to have obtained on loan. To me it appears to be for the interest of the State, that the principal of our funds, unless on great and urgent occasions, should remain untouched; and that whenever our necessary expenses exceed our income, the deficiency should be supplied by taxes judiciously and impartially imposed. The confidence I have in the good sense of our constituents, persuades me that every tax adopted on proper occasions, and for necessary purposes, and on an equitable plan, will meet with their approbation; especially when they reflect that all the officers of the government, and every member of the Legislature must partake in its inconvenience.[4]

But whatever difficulties or differences in opinion may exist or occur relative to our domestic expenses, it certainly becomes us, unanimously and firmly to resolve that they shall not be increased by tribute and contributions to any foreign nation. The great sovereign of the universe has given us independence, and to that inestimable gift has annexed the duty of defending it. We may be involved in a severe contest, but we have no reason to despair of success. The United States cannot be conquered but by civil discord under foreign direction; and it is useful to recollect, that to this cause all fallen Republics have owed their destruction. History will declare to future ages, that the United States were as kind as a neutral nation could with justice be, to the Republic of France, in the day when her destiny was doubtful. It is to be hoped that history will also declare, that when in the day of her power, France became tyrannical as well as triumphant, and had indecently required us to descend and take a place among

[4] A general tax law, chap. 72, was passed on the 1st of April, 1799.

her tributaries, the United States with great magnanimity and not with less wisdom spurned her requisitions, and maintained her dignity.

Permit me to conclude by assuring you, that I shall most cordially co-operate with you in cherishing a spirit of union and of patriotism; and in encouraging and enabling the citizens of this State to take not only a due and nccessary, but a distinguished part in preserving and transmitting to posterity, our national honor unsullied, and our national rights and sovereignity undiminished.

JOHN JAY.

Albany, August 9th, 1798.

SPECIAL MESSAGES.

August 10. To the Senate: Transmitting a communication from the Governor of Massachusetts including a resolution unanimously adopted by the Legislature of that State, proposing an amendment to the Federal Constitution, relative to the introduction of foreign influence into our national councils.

August 10. To the Senate:

"GENTLEMEN.—The Hon. John Sloss Hobart, Esquire, having resigned his seat in the Senate of the United States, during the recess of the Legislature, I appointed William North, Esquire, to succeed him until the next meeting of the Legislature, that appointment now expires, and the vacancy remains to be filled.[5]

JOHN JAY."

Albany, August 10th, 1798.

August 10. To the Assembly:

"GENTLEMEN.—The Legislature, by an act passed at the last session appropriated three thousand dollars for

[5] The Legislature on the 17th of August appointed James Watson to succeed Senator Hobart.

the purpose of erecting an arsenal in the city of New York. I find it to be impossible to have an useful one built for that sum, and it did not appear to me advisable to begin one on a plan that would require a larger sum, under an expectation that further and future appropriations would be made to carry it on and finish it.[6]

JOHN JAY."

Albany, August 10th, 1798.

August 14. Reply to the Senate's address. (See note 1.)

August 15. Reply to the Assembly's address. (See note 1.)

August 27. The Legislature adjourned to meet at Albany the first Wednesday (2d) of January, 1799.

1799. JANUARY.

SECOND MEETING. ALBANY.

January 3. To the Senate: Transmitting the answer of the President of the United States to the address presented to him by the Legislature at the August meeting. (See note 1.)

January 4. To the Assembly: Transmitting a communication from the Governor of Connecticut, including a resolution adopted by the Legislature of that State proposing the following amendment to the federal Constitution, which was based upon the action, already noted, taken by Massachusetts:

"That (in addition to the other qualifications prescribed by said Constitution) no person shall be eligible as President or Vice-President of the United States; nor shall any

[6] The subject of arsenals was included in the act for the defence of the State, chap. 5, passed August 27, 1798, which authorized the Governor to erect one or more arsenals at places to be selected by him, and no limit was imposed on the amount which might be expended for this purpose.

person be a Senator or Representative in the Congress of the United States except a natural born citizen, or unless he shall have been a resident in the United States at the time of the Declaration of Independance, and shall have continued either to reside within the same, or to be employed in its service, from that period to the time of his election. And in case the Senators and Representatives of this State in Congress, shall find that the aforesaid amendment is not conformable to the sentiments of a constitutional majority of both branches of the national Legislature, they are hereby requested so to modify the same as to meet the sentiments of such majority. Provided however, that an amendment which may be agreed upon shall exclude from a seat in either branch of Congress, any person who shall not have been naturalized at the time of making this amendment, and have been admitted a citizen of the United States, fourteen years at least, at the time of such election."

January 5. To the Senate:

"GENTLEMEN.—Time and experience frequently discover defects, even in laws prepared and passed with the greatest circumspection. A case has lately occurred, for which our penal code has omitted to provide. Certain prisoners in the gaol of the city and county of New York, conspired to effect their escape by force, and with arms; and they did, in a daring and violent manner break the gaol. On being convicted of this offence they were sentenced to imprisonment and hard labor in the State prison for limited terms. Justice requires that at the expiration of those terms, or on their being pardoned, they should be returned to the said gaol, to answer the plaints or charges on which they had been committed; and a proper manner of doing it in this and similar cases, should be prescribed by law.[7]

[7] Punishment for escape was prescribed by an act, chap. 58, passed March 21. 1801. The Penal Code, section 84, provides for the punishment of persons convicted of an escape, by authorizing an imprisonment for a term equal to that portion of his original term of imprisonment which remained unexpired upon the day of his escape.

It continues to be a question, whether in any and what respects, convictions in cases heretofore capital, extinguish or affect civil rights or relations.[8]

To give the present mild system of punishments a fair experiment, particular care should be taken to prevent escapes from State prison; one has taken place, not from want of fidelity, but from want of vigilance. To me it appears advisable that rewards for taking such fugitives should be directed.

The present method of punishing petty larcenies, proves to be inexpedient; from various and well known causes they increase, and among those causes, the multitude of tipling houses indiscreetly licensed is not the least.[9]

Permit me also to suggest, whether there ought not to be some limitation to the duration of imprisonment of insolvents for debt, except perhaps on judgments obtained by sureties. Although the obligation of contracts cannot be constitutionally extinguished or impaired by State acts,* yet it appears to me, that your authority and jurisdiction clearly extends to the means of enforcing such obligations, and to the modifying those means in the manner best accommodated to the principles of justice and humanity, and to the true and important interests of the State.[10]

I also submit to your consideration, whether it would not be useful to direct, that all sums of money exceeding a certain amount, which may be brought into the Court of Chancery, or into the Supreme Court, to abide the event of a suit, should be deposited (subject to the order of the

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[8] By chap. 57, passed March 29, 1799, persons sentenced to imprisonment for life were declared to be civilly dead.

[9] Chap. 78, passed April 1, 1799, was intended to regulate and restrict licenses to sell intoxicating liquors.

* U. S. Const. Art. 1, § 10, clause 1.

[10] This subject, relating to the discharge of imprisoned debtors, was included in chap. 85, passed April 2, 1799.

court) in the Banks of New York or Albany, where they would be safely kept without any expense of the parties.

JOHN JAY."

Albany, 5th January, 1799.

January 7. To the Assembly:

"GENTLEMEN.—I herewith lay before you a letter of the 4th of last month, from two of the Commissioners, appointed for providing arms, accoutrements and field artillery for the use of the State. It contains a statement of facts which they designed for the consideration of the Legislature; and which in my opinion it is proper for me to communicate to you. [See note 2.]

JOHN JAY."

Albany, January 7, 1799.

January 12. To the Senate: Transmitting certain resolutions received from the Legislatures of Virginia and Kentucky.[11] The following are the Virginia resolutions:

"*Resolved,* That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and

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[11] The New York Senate, on the 5th of March, 1799, adopted the following preamble and resolution relative to the powers of the federal government, and directed that they be transmitted to the executives of Virginia and Kentucky:

"Whereas the people of the United States have established for themselves a free and independent national government. And whereas it is essential to the existence of every government, that it have authority to defend and preserve its constitutional powers inviolate, inasmuch as every infringement thereof tends to its subversion. And whereas, the judicial power extends expressly to all cases of law and equity arising under the constitution and the laws of the United States, whereby the interference of the Legislatures of the particular States in those cases is manifestly excluded. And whereas our peace, prosperity and happiness eminently depend on the preservation of the Union, in order to which a reasonable confidence in the constituted authorities and chosen representatives of the people is indispensable. And whereas, every measure calculated to weaken that confidence, has a tendency to destroy the usefulness of our public functionaries and to excite jealousies equally hostile to rational liberty, and the principles of a good republican government. And whereas, the Senate not perceiving that the rights of the particular states have been violated, nor any unconstitutional powers assumed

defend the constitution of the United States, and the constitution of this State, against every aggression, either foreign or domestic, and that they will support the government of the United States in all measures warranted by the former.

That this Assembly most solemnly declares a warm attachment to the union of the states, to maintain which it pledges all its powers; and that for this end it is their duty to watch over and oppose every infraction of those principles, which constitute the only basis of that union, because a faithful observance of them can alone secure its existence and the public happiness.

That this Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government as resulting from the compact, to which the States are parties; as limited by the plain sense and intention of the instrument constituting that compact; as no farther valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable and dangerous exercise of other powers not granted by the said compact, the states who are parties thereto have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

That the General Assembly doth also express its deep regret that a spirit has in sundry instances been manifested by the federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which having been copied from the very limited grant of powers in the

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by the general government, cannot forbear to express the anxiety and regret with which they observe the inflammatory and pernicious sentiments and doctrines which are contained in the resolutions of the Legislatures of Virginia and Kentucky; sentiments and doctrines no less repugnant to the constitution of the United States and the principles of their Union, than destructive to the federal government, and unjust to those whom the people have elected to administer it.

Wherefore, Resolved, That while this Senate feel themselves constrained to bear unequivocal testimony against such sentiments and doctrines, they deem it a duty no less indispensable, explicitly to declare their incompetency as a branch of the Legislature of this State to supervise the acts of the general government."

The Assembly also adopted a similar declaration on the same subject.

former articles of confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration, which necessarily explains and limits the general phrases; and so as to consolidate the states by degrees into one sovereignty, the obvious tendency and the inevitable consequence of which would be, to transform the present republican system of the United States into an absolute, or at best, a mixed monarchy.

That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution in the two late cases of the 'Alien and Sedition acts,' passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government; and which, by uniting legislative and judicial powers to those of executive, subverts the general principles of free government, as well as the particular organization and positive provisions of the federal constitution; and the other of which acts exercises in like manner a power not delegated by the Constitution, but on the contrary, expressly and positively forbidden by one of the amendments thereto; a power which, more than any other, ought to produce universal alarm because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

That this State having, by its convention which ratified the federal constitution, expressly declared, 'that among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States,' and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, having, with other states, recommended an amendment for that purpose, which amendment was in due time annexed to the constitution. it would mark a reproachful inconsistency and criminal degeneracy if an indifference were now shown to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

That the good people of this Commonwealth having ever felt and continuing to feel the most sincere affection to

their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that constitution which is the pledge of mutual friendship, and the instrument of mutual happiness; the General Assembly doth solemnly appeal to the like dispositions of the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional, and that the necessary and proper measures will be taken by each, for co-operating with this State, in maintaining unimpaired the authorities, rights and liberties, reserved to the states respectively, or to the people.

That the Governor be desired to transmit a copy of the foregoing resolutions to the executive authority of each of the other states, with a request that the same may be communicated to the Legislature thereof.

And that a copy be furnished to each of the Senators and Representatives representing this State in the Congress of the United States."

The Kentucky resolutions, nine in number, are even more emphatic than the Virginia resolutions against the power of Congress to interfere with rights reserved to the states.

January 12. To the Assembly:

"GENTLEMEN.—The Attorney General has represented to me, by a letter dated the 10th inst. the necessity of making explicit provision, by law, for auditing accounts of expenses incident to those suits (prosecuted or defended by him) which concern the interest of this State. It appears to me proper to lay this letter before you, and to recommend the subject of it to your attention.[12]

JOHN JAY."

Albany, 12th January, 1799.

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[12] An act, chap. 2, "providing for the expenses of suits in which the people of this State are interested" was passed January 26, 1799.

January 19. To the Senate:

"GENTLEMEN.—The Surveyor General, in a letter which I now lay before you, mentions certain difficulties in executing the duties enjoined upon him by a statute passed in 1793, to make inquiry and notify the Attorney General concerning lands patented on conditions of settlement.

Whether it would conduce to the true interest of the state to insist rigorously on the conditions, is a question which in my opinion deserves much consideration; but if that should be judged to be advisable, the means of securing all the benefits which may be supposed to result from those conditions, cannot be rendered too easy, prompt and effectual.

JOHN JAY."

Albany, 19th January, 1799.

February 2. To the Senate:

"GENTLEMEN.—The papers herewith delivered to you relate to a controversy at law between an Oneida Indian and one of our citizens. The Indians are in general so uninformed of our judicial proceedings, as to be exposed to distressing difficulties on that account. Circumstanced as they are it is not unnatural for them to impute to improper motives the inconveniences necessarily resulting from their not knowing and consequently not carefully attending to the rules and orders of our courts.

I therefore submit to your consideration whether it would not be proper to secure to these people the means of obtaining substantial justice in such cases, either by adding to the duties of the assistant attorney general of the district, that of being their counselor and attorney at law or in any other manner you may deem advisable.

Although the power of these tribes has diminished, yet their confidence and good will have not ceased to be valuable; besides, considering the relations in which we stand

to them, it appears to me, that in proportion as they become less and less able or inclined to assert or defend their rights by arms, we should (as to matters proper for our jurisdiction) become more and more disposed to protect them by law, and measures conducive to their security and comfort.[13]

JOHN JAY."

Albany, 2d February, 1799.

February 5. To the Senate: Transmitting a communication from the Governor of New Hampshire, including resolutions adopted by the Legislature of that State relative to the qualifications of president and vice-president, senators and members of the House of Representatives.

February 5. To the Assembly:

"GENTLEMEN.—I herewith lay before you a memorial from the Mayor, Aldermen and Commonalty of the city of New York, with a letter from the Mayor on the subject of it. The conduct of the corporation, in relation to public and general objects, has in many instances been liberal, and it appears to me that both justice and policy recommend this memorial to attention.[14]

JOHN JAY."

Albany, 5th February, 1799.

February 11. To the Assembly:

"GENTLEMEN.—I herewith lay before you a letter of the 8th inst. from Lt. Col. Stevens, the Commissary of Mili-

[13] By chap. 29, passed March 15, 1799, the assistant Attorney-General residing in the district in which the Oneida Reservation was located was required to act for the Oneida Indians in all legal proceedings. The scope of this provision was afterwards enlarged and made applicable to other tribes, and ultimately resulted in a provision for an Indian attorney.

The same act appropriated a small amount to reimburse the Indian, Jacob Dockstedder, referred to by the Governor, for losses suffered in consequence of his ignorance of the law.

[14] Large sanitary powers were vested in the municipal authorities of New York by chap. 70, passed March 30, 1799.

tary Stores for the State, together with the general returns mentioned in it. The amount of value of these stores is already considerable, and with respect to some of the articles will be augmented. It is, therefore, important that they be kept securely, and in the best state of preservation. The responsibility attached to this office, and the care, knowledge and time necessary to discharge the duties of it, afford the officer good reason to expect a correspondent compensation: Unless it be such as to induce competent and proper persons to accept it, the office must, of necessity, be committed to men not of that description, and who cannot inspire that degree of confidence which prudence requires.

I have good reason to believe that the personal services and useful agency of Lt. Col. Stevens, in executing and expediting the various military measures taken for the defence of the State for some years past, have been such as far to exceed what the public has a right to expect should be gratuitous. I therefore think it my duty to recommend this subject to your consideration.[15]

JOHN JAY."

Albany, 11th February, 1799.

February 12. To the Senate: Transmitting a report from the commissioners for the erection of a State Prison in New York.

February 12. To the Assembly: Transmitting a communication from the Maryland Council, including resolutions adopted by the House of Delegates of that State, proposing an amendment to the Federal Constitution relative to qualifications of vice-president, senators and representatives in Congress.

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[15] The appropriation act, chap. 94, passed April 3, 1799, fixed the compensation of Col. Ebenezer Stevens as Commissary of Military Stores, at $200 per annum.

February 13. To the Senate:

"GENTLEMEN.—Some Cayuga Chiefs have arrived here, who say they are authorized to sell all the remaining lands of that tribe in this State; and that they are now ready to proceed to the necessary explanations. The papers herewith sent respect this subject.[16]

JOHN JAY."

Albany, 13th February, 1799.

February 16. To the Assembly:

"GENTLEMEN.—The Chiefs and Warriors of St. Regis have, by their deputies now here, sent me a message which I herewith lay before you. They are desirous that the lands reserved to them by treaty should be surveyed, and the lines and limits clearly ascertained and marked.

This measure appears to me to be expedient and necessary to obviate doubts, and prevent disputes relative to the true limits of those reserved tracts.

I therefore submit to your consideration, whether it would not be prudent to provide that this be done as early in the spring as may be proper and convenient.[17]

JOHN JAY."

Albany, 16th February, 1799.

February 18. To the Senate:

"GENTLEMEN.—Several of the productions and manufactures of this State are by law subjected to inspection. It still remains a question whether each branch of inspection should within certain districts be committed to one chief or principal inspector, and he be made responsible both for himself and his deputies, or whether as many distinct and independent inspectors in each branch should

[16] By chap. 25, passed March 8, 1799, the Governor was authorized to purchase any or all of the Cayuga Indian lands.

[17] A survey of the St. Regis land was ordered by chap. 68, passed March 30, 1799.

be appointed as would be necessary to do the business of it.

It appears to me desirable that a well digested system for the inspection of such articles and at such places as may be judged advisable, should be formed and be comprised in one statute.

Recent facts which the city of New York has reason to regret indicate the propriety of further legislative attention to the article of salted provisions. I therefore think it not improper to communicate to you a paper on that subject which contains much information, and which I have received from one of our fellow citizens whose zeal for the public welfare and whose endeavor to promote it are well known.[18]

JOHN JAY."

Albany, 18th February, 1799.

February 21. To the Assembly:

"GENTLEMEN.—In pursuance of the 'Act for the further defence of the State and for other purposes,' a contract has been made with the bank of New York for the loan of two hundred thousand dollars in part of the sum appropriated by that act. To sustain the credit of the state, it is necessary that seasonable provision be made for the punctual payment of the public debts.[19]

Further in pursuance of that act, measures have been taken for building an arsenal on the lot in the vicinity of

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[18] Chap. 61, passed March 29, 1799, contained provisions relative to the inspection of beef and pork intended for exportation, and chap. 88, passed April 3d, provided for the inspection of flour and meal.

[19] The Assembly committee which considered that part of this message relating to the payment of public debts, reported that in its opinion in view of existing conditions there was serious doubt whether it would be "wise, prudent and politic, at this juncture, to raise by tax immediately, the sums referred to in said message."

The purchase of land for Watervliet arsenal, suggested by the Governor, was authorized by the appropriation act, chap. 94. See also note 2.

this city, which belongs to the State. It is intended to erect the arsenal on the northwest corner of it, on Watervliet Street, and it would be convenient that on the opposite corner on the same street there should be a house for the keeper or superintendent, with such workshops and tenements as would be proper for such an establishment.

But it so happens that a small portion of ground in that corner belongs to a gentleman, who perceiving that the State lot would be imperfect without it, was induced by public considerations to purchase it, and he is ready to convey it to the State on being reimbursed the principal and interest of the money which he paid for it. Although it would in my opinion be beneficial for the State to make this little purchase, I doubt whether my authority under the act extends to such an object. [See note 19.]

This arsenal being intended to be the principal depository of our military stores, it will be necessary to provide not only for their being kept securely, but also in good order and condition. Permit me to suggest whether it would not be advisable to authorize the employment of mechanics not only to clean and repair the arms and accoutrements in the arsenal, but also in making new ones, to be sold to the militia at prime cost. To depend on foreign supplies for the articles necessary for our own defence does not appear to be prudent.

JOHN JAY."

Albany, 18th February, 1799.

February 25. To the Assembly:

"GENTLEMEN.—I now lay before you an authenticated copy of an act of Congress which I have received for that purpose from the Hon. James Watson, Esq. one of the members from this State of the Senate of the United States. This act is entitled 'An act respecting balances reported against certain States by the commissioners ap-

pointed to settle the accounts between the United States and the several states.[20]

JOHN JAY."

Albany, 25th February, 1799.

March 4. To the Senate: Transmitting a communication from the Governor of Delaware including resolutions adopted by the Legislature of that State.

March 11. To the Legislature: Transmitting the annual report of the Regents of the University.

March 16. To the Assembly: Transmitting a letter from the Governor of Virginia requesting that the following resolution, adopted by the General Assembly of that State, be submitted to the Legislature of New York:

"The General Assembly of Virginia considering that the privation of personal rights solemnly sanctioned by the constitution and laws of the United States, is arbitrary and unjust; that the right of election to office is one of the most important secured thereby to the citizen; and that it ought not to be destroyed or impaired, especially by regulations having a retrospective operation: Therefore,

Resolved, That the proposition from the Legislature of the State of Massachusetts, having for its object the exclusion of certain citizens from their eligibility to offices which they now actually possess; and the exclusion of other persons who may become possessed thereof upon the performance of certain conditions held out to them by existing law; thus by a retrospective regulation, improper in itself, and inconsistent with the spirit of all our civil institutions, infringing the rights of persons solemnly guaranteed by the constitution and laws, is arbitrary and un-

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[20] A clause in the appropriation act, chap. 94, required the comptroller to "collect and liquidate the expenses incurred by the fortifications in this State for the defense of the United States, and also liquidate with the Secretary of the Treasury of the United States the specie value of the funded debt of the United States assumed by the said states of the debt of this State, on the principles contained in the act of Congress passed the 15th day of February last, relative to the balances reported by the commissioners for settling the accounts between the United States and the several states."

just; and that it ought not to receive the approbation of the General Assembly.

The General Assembly, nevertheless, concurring in opinion with the Legislature of Massachusetts, that every constitutional barrier should be opposed to the introduction of foreign influence into our National Councils.

Resolved, That the constitution ought to be so amended, that no foreigner, who shall not have acquired rights under the constitution and laws at the time of making this amendment, shall thereafter be eligible to the office of Senator or Representative in the Congress of the United States, nor to any office in the Judiciary or Executive Departments."

March 18. To the Senate:

"GENTLEMEN.—The chamber of commerce of the city of New York have presented to me a memorial respecting defects in our laws for regulating the salting, repacking and inspecting beef and pork intended for exportation. They have accompanied this memorial with a paper in which they exhibit what they conceive would be a more expedient system of regulations; and they have done it in a manner well calculated to render it perspicuous.

Considering the attention due to the opinions of that respectable body of merchants, and particularly on a commercial subject so interesting in many respects to the State, I think it my duty to lay that memorial and paper before you, and to recommend the subject of them to your serious consideration. [See note 18.]

JOHN JAY."

Albany, March 18, 1799.

March 22. To the Senate:

"GENTLEMEN.—The same reasons which have so frequently induced me to recommend a revision of our militia laws to the Legislature, now urge me to lay before you a recent and detailed return made to me by the Adjutant General. A careful examination of it will suggest useful

observations; and in my opinion the number who attend the annual inspection parade compared with the number who were absent from it, deserves particular attention. [See note 4.]

JOHN JAY."

Albany, 22d March, 1799.

March 22. To the Senate:

"GENTLEMEN.—The proceedings which have been had in carrying into effect the provisions of the act entitled 'An act for the further defence of this State, and for other purposes,' will appear from the statement which accompanies this message. I also lay before you a chart of the harbor of New York which is alluded to in that statement.

It is obvious, that in forming and deciding upon a plan for fortifying the port of New York, regard must be had to the sum beyond which the expense is not intended to extend. It is also natural to presume that the President of the United States under whose directions the money already appropriated to that object is to be laid out, will experience embarrassments in judging which of any number of different plans ought to be preferred until the result of your deliberations on the late act of Congress respecting balances claimed from certain states shall be known. [See note 20.]

JOHN JAY."

Albany, 22d March, 1799.

March 23. To the Senate: Transmitting an account presented by the municipal authorities of Albany showing expenditures under the act to prevent the spread of infectious disease.

March 25. To the Legislature: Transmitting the annual report and account presented by the New York Hospital.

March 25. To the Senate:

"GENTLEMEN.—I herewith lay before you a copy authenticated by the signature and official seal of the Secretary of State, of the convention between this State and the Oneida tribe of Indians, entered into at a treaty held on the first day of June last; and of the ratification thereof by the President of the United States on the 21st day of last month.[21]

JOHN JAY."

Albany, 25th March, 1799.

March 28. To the Senate:

"GENTLEMEN.—You will perceive from a statement (herewith sent) made by the comptroller, of the monies applied towards defending the rights of this State against the claims to lands in it under Connecticut, that a further sum should be appropriated to that object.

Such are those rights, and such is that claim, that in my opinion the honor and interest of the state demand, that all lawful means should be employed to preserve the former, and to oppose and frustrate the latter.[22]

JOHN JAY."

Albany, 28th March, 1799.

April 2. to the Assembly:

Objections by the Council of Revision to a bill "to amend the statute of limitation."

"1st. Because the statute of limitation, as it now stands, affords the state sufficient security for its rights, since even after the year 1800 its claims may be prosecuted, if they

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[21] This treaty with the Oneida Indians was ratified by chap. 86, passed April 2, 1799.

[22] The appropriation act, chap. 94, authorized the Governor to expend such sums as might be necessary in defraying the charges and expenses in defending the rights of this State against the Connecticut claims.

have arisen within forty years prior to said prosecution, and because a prosecution after a longer period, when the estate has probably passed into the hands of *bona fide* purchasers, and been improved at their expense, and by their labor will always be odious and generally unjust and oppressive.

2d. Because the law operates as an assurance on the part of the State, that it will at a certain period relinquish its claims to the possessor of lands, and therefore should be held sacred and inviolate.

3d. Because the bill goes to render every limitation of title so far as it respects the state, illusory, for if it is expedient now to extend the term for four years, no man can confide that before that period elapses, it may not be again deemed expedient to extend it."

The bill was not passed over the veto.

April 3. The Legislature adjourned without day.

THE RELATIONS BETWEEN THE UNITED STATES AND FRANCE.

The relations between United States and France received special consideration in the Legislature. (See Governor Jay's comments, *ante,* p. 422. The Senate in its address on the Governor's message said:

"While we regret the occasion which has induced your Excellency to convene the Legislature at this unusual season, we cannot but consider the measure as resulting from the menacing aspect of our public concerns and dictated by a just conception of the crisis, and a solicitude on the part of your Excellency for the dearest interests of our common country.

The communications from the Executive of the United States referred to by your Excellency have produced just alarm to every patriotic American; and beholding, as we do, in the conduct of the Executive Directory of France, towards these United States, the most painful proofs of a dereliction of every principle of justice and rectitude, and of settled hostility to this country, we do not hesitate in

declaring the measures of defence adopted by the general government, in our opinion to have become indispensably necessary, and entitled to our warmest approbation.

The faithful page of history will record, the early recognition of the French Republic by our government, while the issue of her struggles was dubious; our friendship in an anticipated payment of our national debt, and our sacred observance of the great land marks of political justice, in the discharge of the various duties imposed by our neutral situation, a conduct on which the early declaration of France invited our government to repose itself for the preservation of peace and security.

While we view this crisis as pregnant with danger, and demanding the union of all who cherish a love of country in a patriotic display of the virtues and talents of America, we cannot believe, that in a cause so just, with resources so abundant, under the military auspices of a character alike distinguished in the cabinet and in the field, with a reliance on the great dispenser of all earthly blessings, the republic is to be despaired of.

Nor do we conceive the period to have arrived, when the annals of the United States are to be sullied forever by the inglorious purchase of peace in a compliance with the mercenary demands of the French government.

While history presents us on one hand with the successful struggles of many inconsiderable, but united republics, for their liberties against the most formidable powers; and on the other with the overthrow and subjugation of States, much more considerable, but divided, we accord with your Excellency in the sentiment, that the great source of danger to be apprehended to the United States may be found in the disunion of our citizens under the influence of foreign councils.

While a disposition on the part of France, to interfere in the political concerns of other nations, is evinced by multiplied proofs painful to humanity, in Europe, as well as America, we repose ourselves with confidence on the virtue of our fellow citizens of all classes, that they will repel with all the ardour of patriotism, those unhallowed approaches, so fatal to our peace and independence.

On the subject of defence, and the other interesting objects recommended by your Excellency, we shall bestow all that consideration, which a regard to the protection

and safety of every part of the State, and the important crisis may demand."

The Governor replied to this address as follows:

"GENTLEMEN.—I receive this address with great satisfaction—it expresses sentiments and evinces knowledge which cannot be too generally entertained and diffused. While the people of the United States have just and clear views of their true interests, it will not be possible to force or seduce them to pass under a foreign yoke; especially when at present, both their civil and military affairs are directed by men of tried virtue and patriotism, and who by great and eminent services have justly merited the confidence they enjoy. JOHN JAY."

The Assembly in its address to the Governor on his opening speech made the following observations on this subject:

"Being fully convinced that your Excellency, in convening this extraordinary session of the Legislature, has been solely influenced by a just and attentive regard to the public welfare, and that the measure is warranted by the very critical situation of public affairs, it is with the utmost promptitude, that we meet your Excellency at this important and alarming crisis.

It is to be regretted, that the repeated, disinterested and friendly attentions of our government to the Republic of France, have not produced the happy effects we had reason to expect; and that from the progress and result of the negotiations tendered by the United States to the Republic of France, there is great reason to apprehend that peace with us is not among the objects of the present Directory.

Admonished by multiplied examples in Europe, that civil discord directed by a foreign hand is the bane of Republican governments, we feel persuaded that the virtue and patriotism of the great body of our fellow citizens, will repel with equal firmness the diplomatic arts, and open violence, not only of the Republic of France but of all foreign nations."

To this address the Governor replied as follows:

"GENTLEMEN.—It gives me pleasure to find that you concur with me in opinion, as to the situation of our public affairs, and the expediency of convening the Legislature at this alarming crisis. The utility of this measure will depend on the result of your deliberations; which will, I am persuaded be such, as clearly to evince, that the fear of France has not fallen upon us; but on the contrary, that we have not only sensibility to feel, but also resolution to resent, the indignities offered to our nation and government, and to repel with the spirit becoming a brave and free people, every attack on our national honor and independence.

JOHN JAY."

In addition to the foregoing addresses to the Governor, the Legislature prepared the following address to the President of the United States, which was transmitted to him by the Governor:

"Persuaded that it was the duty and interest of the United States to preserve and cultivate peace and a good understanding with all nations, we unanimously approve of the measures you have taken for that purpose with respect to France.

The manner in which our ministers of peace and conciliation have been treated and rejected by that Republic, we consider as an infraction of the laws and usages of civilized nations, and as a violation of that equality of sovereign rights which ought to subsist and be maintained between them. The indignity offered to our nation by that treatment is greatly aggravated by pecuniary requisitions. On these topics we cannot reflect without surprise and indignation. When to these considerations are added, those extensive depredations on our commerce which no amicable overtures for accommodation could induce the Directory to forbear or suspend, we think our situation relative to that Republic, so serious, as to render a general expression of the public sentiment indispensable.

Being a free and independent people, we are determined

to remain so. The Constitution of the United States is the deliberate work and free choice of the people, and we will at every hazard maintain it. The government of the United States results from the Constitution, and being administered by men constitutionally chosen and appointed, shall, in all its constitutional and legal proceedings, receive our decided support. And whatever differences of opinion may have existed among us on local questions on these great points, we neither are nor will be *a divided people;* but on the contrary, it is our unanimous resolution, at the risk of our lives and fortunes, to maintain and defend our national honor, rights and independence, against the French Republic, and every other nation and power.

We are convinced of the necessity of union among ourselves, and shall regard those as unworthy, who at this momentous juncture of our affairs shall attempt to disseminate discord among the people, who, while united, are able to repel the attacks of any enemy that may dare to invade our country.

This State, Sir, will, in every event, and to every extent, bear her full proportion of the national burthens, in full confidence that due attention will be paid to the strong claims she holds in the national defence and protection.

We cannot on this occasion omit expressing the satisfaction we derive from the fresh instance of great and disinterested patriotism which your illustrious predecessor has manifested. He has been, and may he long continue to be, the instrument of great good, and the example of great virtue to his fellow citizens. You also have strong and well founded claims to the gratitude of our country. May a kind providence enable you to add to them by such councils and measures as will speedily secure the blessings of honorable peace to our nation, and to yourself the honor and satisfaction of having wisely and successfully fulfilled the duties of your exalted and important station."

President Adams replied to this address as follows:

"GENTLEMEN.—I have received your unanimous address. If an address of so much dignity and authority could have

received any addition from the channel of conveyance, you have chosen that which is nearest my heart, in his Excellency John Jay, the Governor of the State of New York, of whose purity, patriotism, fortitude, independence and profound wisdom I have been a witness for a long course of years. The position in the Union of the great and growing State of New York, its incalculable advantages in agriculture as well as commerce, render this unanimous act of the two Houses of its Legislature, one of the most important events of the present year.

With the most sincere respect and cordial satisfaction, Gentlemen, I congratulate you on the decided appearance in America, of a solid national character. From the Mississippi to the St. Croix, unquestionable proofs have been given of national feelings, national principles, and a national system. This is all that was wanting to establish the power of the American people, and ensure the respect and justice of other nations.

For all that is personal to myself, I pray you to accept my best thanks; I never have had, and I never shall have, any claims on the gratitude of my country. If I have done my duty to them, and they are convinced of it, this is all that I have desired or shall desire. The strong claims which your State holds in the national defence and protection, will have every attention that depends on me. I thank you for the expression of the satisfaction you derive from the fresh instance of great and disinterested patriotism which my illustrious predecessor has manifested. May he long continue to be, as he ever has been, the instrument of great good, and the example of great virtue to his fellow citizens. The last act of his political life, in accepting his appointment, will be recorded in history as one of the most brilliant examples of public virtue that ever was exhibited among mankind.

JOHN ADAMS."

Quincy, August 31, 1798.

JOHN JAY, Governor.

The Legislature met at Albany on the 28th of January, pursuant to chapter 104, passed April 6, 1798, which fixed the last Tuesday of January as the time, and Albany as the place of meeting of the Legislature.

On that day the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.— You will, I am persuaded, join with me in deeply regretting that the topic which naturally rises first into view on this occasion, is the afflicting and unexpected death of that virtuous and great man, who both in the field and in the cabinet, in public and private life, attracted such an uncommon degree of merited esteem, confidence and admiration. His memory will be cherished by the wise and good of every nation, and truth, triumphing over her adversaries, will transmit his character to posterity in all its genuine luster. His excellent example and excellent admonitions still remain with us; and happy will that people be whose leaders imitate the one and observe the other. But painful and important as our loss is, and difficult as it may be to restrain the effusions of our sensibility, yet it is to be recollected that the duties and business for which we are assembled, have indispensable claims to attention. Let us therefore proceed to fulfill those duties, and to do that business with the like laudable fidelity, circumspection and diligence, by which that real and eminent patriot was so greatly distinguished.[1]

I take this early opportunity of laying before you a resolution of the legislature of Connecticut, signifying a desire amicably to settle the controversy mentioned in it,

[1] See *post*, p. 461, for a note on the death of Washington.

and appointing commissioners on their part for the purpose. This resolution will doubtless be received with respect and cordiality. Such is the respectable character of Connecticut, and so intimate are our mutual relations, that a controversy so singular in its origin, so irritating in its prosecution, and so mischievious in its tendency and example, cannot, in my opinion, be too soon extinguished by amicable and proper stipulations with that state.[2]

I also lay before you certain resolutions of the legislature of Vermont. They propose an amendment to the constitution of the United States, which, from the importance of it, as well as from the respect due to a sister state, is entitled to mature consideration.

The constitution of this state having with great wisdom committed the legislative, executive and judicial powers of government to three distinct departments, I submit to your consideration whether the recent practice of annual gratuitous allowances by the legislature to the officers of the executive and judicial departments, can consist with that independence by which alone the constitutional balance between all the departments can be kept even, and their reciprocal checks on each other be preserved.[3] The small proportion which our important public statutes bears to the numerous private ones passed for individual or for local and particular purposes, has become remarkable. Might not the claims of individuals be for the most part heard, examined and ascertained in some mode more easy to them,

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2 By chap. 15, passed February 28th, the Governor was authorized to appoint three commissioners who were vested with power to settle the controversy over certain lands situated in this State, and over which Connecticut had claimed jurisdiction.

3 The appropriation act, chap. 133, passed April 8, gave the judicial members of the Council of Revision an extra allowance for services during the session of the Legislature, and also allowed extra compensation to other officers. The appropriation bill when first passed was vetoed on the ground that the compensation allowed the judges should be permanent and not temporary. See special message of April 8.

and less expensive to the state, than by the legislature; and ought not business of great and general moment to precede that of less and limited importance? It has not unfrequently happened that the earlier part of the session has been so far consumed in debates, and in preparing and passing acts respecting these lesser matters, that much interesting public business has been either too hastily dispatched towards the conclusion of the session, or been entirely relinquished and left unfinished. The frequency of acts for private incorporations, and the difficulty of afterwards restraining or correcting the evils resulting to the public from unforeseen defects in them, lead me to advert to the prudence of passing them only under such circumstances of previous publicity and deliberation as may be proper to guard against the effect of cursory and inaccurate views and impressions.

Promising theories are not always confirmed by experience; and it is found that new laws, however carefully framed, have sometimes proved to be less salutary than was expected, and even to be productive of greater inconveniences than those against which they were intended to provide. Of this description is the act for the trial of causes to the amount of ten pounds. The evils arising from certain defects in it are manifest, and are generally seen and acknowledged. The skillful and beneficial manner in which it has, by a late act, been modified and adapted to the city of New York, leaves little room to doubt but that it may likewise be so amended and modified as to be well accommodated to every other part of the state; and the execution of it rendered more easy and agreeable to the magistrates.[4] The statute relative to punishments being in a course of fair experiment, I will only suggest whether it would not be more expedient that persons convicted of the impious and dangerous crime of perjury, and of assaults

[4] The act referred to by the Governor, relating to the trial of small causes, was amended by chap. 36, passed March 21.

with intent to commit felonies of any kind, should receive their punishment of imprisonment in the state prison than in the common jails, from which escapes are more easily effected, and where the taverns usually, and in my opinion unadvisedly, permitted to be kept, lead to irregularities and corruption of morals.[5] Notwithstanding the care with which our laws and regulations relative to infectious diseases have been observed, yet our principal city has again been distressed by the return of a very destructive one. Whence it arises, is a question which still remains involved in much obscurity, but as either of the two natural causes to which it is generally ascribed may be the true one, every further mean which human sagacity can devise, should be employed to remove or counteract them. If, however, in this instance, as in many others, Providence is accomplishing the purposes of moral government by the instrumentality of second causes, our future preservation from their calamitous effects will depend more on moral than municipal reforms.[6]

As the government most to be preferred is that which procures to the people the greatest degree of justice, security and rational liberty, so by such a government no acts or symptoms of defiance to lawful authority are viewed with indifference. Experience shows that impunity invites aggression, and that licentiousness always derives encouragement from toleration. Feeling the force of these reflections, I think it my duty to press your attention to the daring opposition which has repeatedly, and with singular impunity, been made in the county of Columbia, to the judicial authority of the state, and to the recent indications

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[5] The Governor's suggestion as to the punishment of perjury was adopted and included in chap. 60, passed March 25.

[6] Remedies for the conditions mentioned by the Governor were provided for by chap. 87, passed April 4, which authorized the municipal authorities of New York to purchase certain buildings and grounds deemed dangerous to the health of the city, and chap. 120, passed April 7, which authorized the imposition of stringent sanitary regulations.

of it which are detailed in the papers which I shall lay before you. The manner in which these offenses are perpetrated renders the ordinary means of suppressing them in several respects inadequate. While we rejoice, and with great reason, in the general and increasing prosperity of the state, it is proper to reflect that next to the kind providence of the Almighty, we owe this prosperity to the security with which industry pursues its lawful objects, and enjoys its fruits. It is therefore of the last importance that this security be preserved, and that the regular administration of justice which protects it be not interrupted. Whatever may be the claims or rights of contending individuals, it is their duty to meet each other in the proper courts, and peaceably acquiesce in the justice of their country; and it is equally the duty of the government to protect the citizens in the quiet enjoyment of their property and rights, and to enforce obedience and submission to the laws.

Although the great and national affairs of war and peace do not belong to our jurisdiction, yet such is their importance to our immediate welfare, and so great would be our danger if any fallacious prospects of peace should mislead us into a state of ill-founded security, that the very judicious and seasonable remarks of our patriotic President on this subject, cannot be too generally known, nor too strongly impressed. He reminds us that "at a period like the present, when momentous changes are occurring, and every hour is preparing new and great events in the political world; when a spirit of war is prevalent in almost every nation, with whose affairs the interests of the United States have any connection, unsafe and precarious would be our situation were we to neglect the means of maintaining our just rights." From the same high and respectable authority we are given to understand that under existing circumstances, "nothing short of the power of repelling aggressions will secure to our country a rational prospect of

escaping the calamities of war, or" (what would be still more calamitous) "national degradation." The measures which have been taken pursuant to acts of this state relative to these subjects, shall be mentioned in a future communication, and it is evident from the preceding observations that our attention to them is not to be relaxed.[7]

Among other objects which will present themselves to you, there is one which I earnestly recommend to your notice and patronage. I mean our institutions for the education of youth. The importance of common schools is best estimated by the good effects of them where they most abound, and are the best regulated.[8] The two colleges in this state have, from their extensive and increasing utility, strong claims to the care of the legislature, and it appears to me that they should be enabled uniformly to answer the valuable purposes for which they were established. Our ancestors have transmitted to us many excellent institutions, matured by the wisdom and experience of ages. Let them descend to our posterity, accompanied with others, which by promoting useful knowledge, and multiplying the blessings of social order, and diffusing the influence of moral obligations, may be reputable to us and beneficial to them.[9]

Conscious that the sentiments which I have now expressed, are prompted by the best motives, and by an

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[7] The appropriation act, chap. 133, made provision for collecting and depositing in arsenals, arms and ammunition belonging to and not under the care of the United States.

[8] The common school law, passed April 9, 1795, appropriated twenty thousand pounds annually for five years for the purposes of the act. The law therefore expired by its own limitation in 1800. The Assembly, in April, 1800, proposed to revive and continue the law, and for this purpose incorporated a provision in the appropriation act, but this provision was rejected by the Senate, and the public common school system was thereupon temporarily discontinued. It will be observed in subsequent notes that the common school system was revived and permanently established in 1812.

[9] By chap. 19, passed March 7, Union College was aided by a gift of $10,000, and also by authorizing it to receive certain unappropriated public lands.

ardent desire to advance the welfare of our common country, and being persuaded that your deliberations will be animated by similar views and dispositions, I indulge the pleasing expectation that the results of this session will correspond with the high trust and confidence reposed in us by our constituents.

JOHN JAY.

Albany, January 28, 1800.

SPECIAL MESSAGES.

January 29. To the Senate: Presenting for legislative consideration the cases of Benjamin Holmes and John Pastano who had been convicted of murder and sentenced to be executed the 10th inst., but who had been respited by the Governor until the 7th day of February.[10]

January 29. To the Assembly: Transmitting the following letter from the Surveyor General with a map of the St. Regis Indian lands:

"SIR.—Pursuant to the act of the Legislature directing 'the Surveyor General to lay out and survey the lands reserved to the Indians residing at St. Regis,' I have surveyed, in a manner satisfactory to the chiefs of that tribe, the tract equal to six miles square, reserved to them at their village; as also the two tracts of one mile square each, at the mills on Salmon River and Grass River. Maps descriptive of the boundaries of those several tracts I have the honor herewith to deliver.

When I was about to commence the survey of the meadows reserved to the use of those Indians on Grass River, they informed me, in council, that they conceived themselves entitled to a tract of half a mile on each side of the river, from its mouth up to the mill, and that they had caused it to be run out in that manner for their meadow

[10] Pastano was pardoned by an act, chap. 3, passed February 14th. The Legislature declined to pardon Holmes, and by chap. 10, passed February 22d, fixed the last Friday of March as the date of his execution.

reservation, and intimated a desire that my survey should be made in a correspondent manner. I was obliged to inform them that I had no guide but their treaty, and consequently could regard no surveys that had been made without authority, and that nothing but the meadows barely along the river, besides the mill tract, was pointed out as their property. They then pointedly desired me to make no marks on that ground, observing at the same time that as a deputation from their nation would have to repair to Albany, on other business, during the sitting of the Legislature, they wished by that opportunity to obtain an explanation of what they conceived to be a misapprehension between the parties to the treaty.

Not being permitted to make a survey of the meadows, I availed myself of the opportunity, in going up and down the river, of making an estimate of them, with a view to report the same as an article of information that might be serviceable in case a compromise respecting them should be contemplated.

These meadows consist of narrow strips along the margin of the river, where inundations have prevented the growth of the timber. They lie in a number of patches from half a chain to three or four chains in width, making in the whole extent, which is about six miles, not exceeding sixty acres altogether, as nearly as I could judge. The grass on them, with small exceptions, is all wild grass. Their value, though of no very great consideration as an appendage to the adjoining lands, is however esteemed as almost inestimable by Indians, who consider the clearing of lands as a matter entirely beyond their power to accomplish. It will be impossible moreover that the Indians should ever enclose these meadows with fences so as to prevent their destruction by the cattle of the white inhabitants, who will soon settle thick in their neighborhood; and this will inevitably become the cause of disagreeable differences.

It is proper for me also to observe that the ground on which these meadows are situated, as well as the mile square at the mill on Grass River, has been patented in tracts distinct from Macomb's purchase, and therefore the sanction which the proprietors of that purchase gave to the treaty will not exonerate the State from the duty of compensating the owners of the lands from which these parts of the reservations are taken. [See note 12.]

I have also to report to your Excellency that there is a defect in the laws directing the sales of the lots in the town of Oswego and in the village of Salina, at the Salt Springs, inasmuch as no power is expressly given to any one to execute conveyances from the State to the purchasers. Those who became purchasers paid, as directed by law, a quarter part of the purchase money on the days of sale, but no part of the remainder has been received because of the impracticability of giving titles. It will therefore be proper that these defects in the laws be remedied and a definite time allowed to the persons entitled to grants to fulfill the conditions of their respective purchases.[11]

I have the honor to be,
Sir, Your Excellency's
Most obedient servant,
SIMEON DE WITT."

Albany, January 14, 1800.

February 3. Thanking the Senate for its address.

February 3. To the Assembly: Transmitting affidavits relative to the opposition in Columbia County to the judicial authority of the State.

February 4. Thanking the Assembly for its address.

February 10. To the Senate: Transmitting a letter relative to agriculture and commerce. The letter is not given in the journal.

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[11] Chap. 77, passed April 1, amended previous statutes relative to salt springs and lands, by authorizing the Surveyor-General to execute deeds of such lands.

February 13. To the Assembly: Transmitting the minutes and proceedings of the Commissioners under an act, chapter 112, passed April 6, 1798, ceding to the United States certain lands about the harbor of New York.

February 17. To the Senate: Transmitting a letter from the Surveyor General relative to the expediency of obviating by further stipulations with the St. Regis Indians, certain conveyances incident to some of the boundary lines of the land reserved to them.[12] See Special message of January 29.

February 17. To the Assembly:

"GENTLEMEN.—I have received, and now lay before you, a report from the Inspector General of Provisions for the city of New York, respecting that branch of inspection. It contains useful information and judicious remarks.[13]

Permit me to submit to your consideration, whether the inspection of provisions, pot ash, lumber, &c. would not probably be better performed, if each of these branches of inspection was committed to a single inspector, who should be allowed competent fees, should appoint and pay his own subinspectors or deputies, and should be responsible for the whole.

JOHN JAY."

Albany, 17th February, 1800.

February 19. To the Assembly:

"GENTLEMEN.—I herewith lay before you, a report of the commissioners for settling the titles to land in the county of Onondaga. This report is reputable to them, and interesting to the public, and will, I am persuaded,

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[12] The Legislature adopted a concurrent resolution requesting the commissioners of the land office to settle with the St. Regis Indians for lands included in the recent treaty.

[13] The statute regulating the salting, repacking and inspection of beef and pork for exportation was amended by chap. 93, passed April 4.

give occasion to measures, which will discourage fraud, and vindicate the rights of the State.

Albany, 19th February, 1800. JOHN JAY."

March 5. To the Assembly:

"GENTLEMEN.—In pursuance of the statute relative to that subject, an arsenal has been erected on the lot, belonging to the State, in Watervliet Street, and the adjoining little lot has been purchased for the sum limited by the act respecting it. The arsenal is nearly completed. The sums hitherto issued for the purpose are 8752 dols. 85 1-2 cents, paid to the contractors in money and materials, and 1427 dols. 14 1-2 cents, which has been applied by the superintendents to repairing the wharf and defraying other incidental expenses, but the account of which remains to be audited and finally settled.

The lot on which the arsenal stands, and the lesser one lately purchased, afford ample room for an establishment on any scale that may be deemed expedient. How far, and to what extent, a manufactory of arms should be connected with it, the Legislature will consider and decide.

It is proper that provision be made for keeping this, and all other buildings belonging to the State, in constant repair.

Two thousand five hundred stand of arms have been imported, and will be placed in this arsenal as soon as it shall be fit to receive them. And provision should be made for keeping them, and all arms deposited in the arsenal, in good order. The accounts respecting those arms are not finally settled. JOHN JAY."

Albany, 5th March, 1800.

March 11. To the Assembly: Transmitting a letter from the Secretary of State.

March 17. To the Assembly:

"GENTLEMEN.—Having received from the Hon. the Chief Justice and the Speaker, a letter, in which doubts

are intimated relative to the construction of the act passed this session for reviving and continuing the former one respecting the Treasurer, I think it proper to lay it before you.[14]

JOHN JAY."

Albany, 17th March, 1800.

March 19. To the Assembly:

Objections by the Council of Revision to a bill "giving certain powers to the magistrates of this state in relation to seamen in foreign service."

"Because the right to legislate in this case belongs to the government of the United States, and it appertains to them to remove any doubts or supply any defects which may be supposed in their statute on this subject."

The bill was not passed over the veto.

March 20. To the Legislature: Transmitting the annual report of the Regents of the University.

March 21. To the Assembly: Stating that he had received a large number of copies of recent acts of Congress, and recommending that the Legislature adopt a general plan for the distribution of such statutes.[15]

March 22. To the Senate: Transmitting a report from the Adjutant General.

March 28. To the Senate:

"GENTLEMEN.—You will perceive by a letter from the Vice-President of the United States, which I herewith lay

[14] The act in relation to the Treasurer, chap. 5, passed February 15, was amended by chap. 83, passed April 4, relative to the State Treasurer's official oath and bond.

[15] No permanent provision relative to the distribution of acts of Congress was adopted, but the Legislature by resolution directed the distribution of the statutes mentioned by the Governor.

before you, that the Hon. James Watson, Esquire, one of the Senators from this State, in the Senate of the Congress of the United States, has resigned his seat in that House.[16]

JOHN JAY."

Albany, 28th March, 1800.

April 8. To the Assembly:

Objections by the Council of Revision to a bill "for the payment of certain officers of government, and for other purposes." [17]

"Because the allowance thereby granted to the Chancellor and Judges of the Supreme Court, in addition to the permanent salaries, is temporary only.

Notwithstanding the fluctuations in the legislative provisions for the salaries of those officers, and however embarrassing and impressive may have been the circumstances which have caused the temporary changes alluded to, yet the Council find it to be their duty to remind the Legislature of those principles of the Constitution, and those great maxims relative to the independence of the judiciary department, which general experience has proved to be essential to the public good.

The Council are sensible that it is a matter entirely of legislative discretion to determine and fix the adequate compensation to the Chancellor and judges, but when the Legislature has exercised its discretion, and ascertained the compensation, the reason of the constitution then applies, and requires such compensation to be permanently established.

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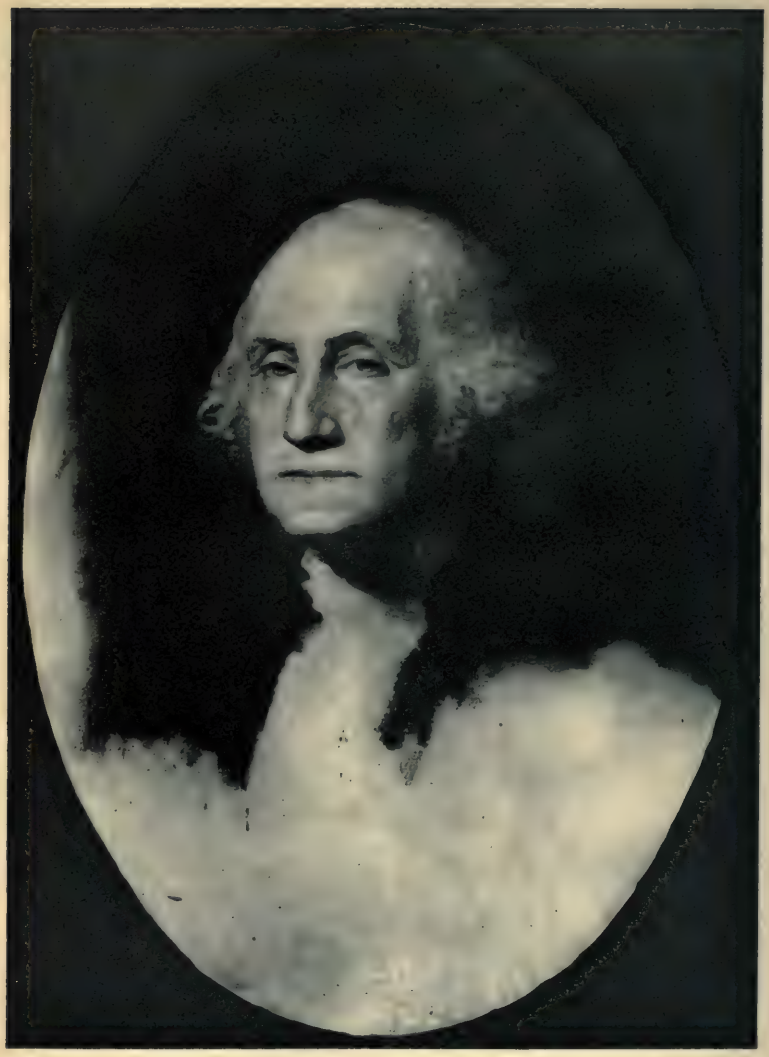
[16] Gouverneur Morris was appointed United States Senator to fill the vacancy caused by the resignation of James Watson.

[17] The salaries bill was passed over the veto, and became a law, chap. 133, on the 8th of April. This veto necessarily affected the whole bill, as there was no provision at that time authorizing the veto of separate items in appropriation bills. The power to veto separate items was included in the Constitution (article 4, section 9) by an amendment adopted in 1874.



G. Washington

By ordaining that the Chancellor and judges should hold their offices during good behavior,[a] the constitution evidently intended to make them independent; but that intention will be greatly frustrated, and the tenure of their offices essentially affected, if they are to depend either in the whole, or in part, for their necessary support upon the annual pleasure of a single branch of the Legislature. Whatever compensation, therefore, in addition to that allowed by the act of the 11th of April, 1792, is deemed requisite, (and the bill is itself evidence of the sense of the Legislature that the allowance in that act is incompetent) ought to be equally permanent, as being equally within the reason of that law.

It is proper that those persons who may, from time to time, be called to renounce the lucrative pursuits of private business, and to devote the best part of their lives exclusively to the public service, may know, with reasonable certainty, upon what to depend; and their requisite independence, as intended by the constitution, can only result from a permanent provision for their support, and from a permanent tenure in their offices.

The bill, therefore, by determining what the compensation to the Chancellor and Judges ought to be, and by making the same temporary only, is inconsistent with the spirit of the constitution, as well as with the obvious dictates of the public good."

April 8. The Legislature adjourned to meet at Albany on the first Tuesday of November, 1800, unless sooner convened by the Governor.

DEATH OF WASHINGTON.

George Washington died on the 14th day of December, 1799. On the 19th President Adams sent a communication

[a] Const. 1777, § 24.

to Congress, informing that body that it "has pleased Divine Providence to remove from this life our excellent fellow citizen, George Washington, by the purity of his character, and a long series of services to his country, rendered illustrious through the world. It remains for an affectionate and grateful people, in whose hearts he can never die, to pay suitable honors to his memory." On the 23d Congress adopted resolutions, among other things, proposing that "a marble monument be erected by the United States, in the capitol, at the city of Washington; and that the family of General Washington, be requested to permit his body to be deposited under it; and that the monument be so designed as to commemorate the great events of his military and political life."

The resolutions also provided for memorial services at the German Lutheran Church in Washington on the 26th, at which time an oration was to be delivered by a member of Congress. The people of the United States were requested to wear crape on the left arm as mourning for thirty days. The resolutions also tendered the condolence and sympathy of the Nation to Mrs. Washington. The President was requested to issue a proclamation announcing Washington's death, and requesting the people to comply with the resolution relative to wearing crape.

On the 30th of December, Congress adopted a resolution "that it be recommended to the people of the United States, to assemble on the twenty-second day of February next, in such numbers and manner as may be convenient, publicly to testify their grief for the death of General George Washington, by suitable eulogies, orations and discourses, or by public prayers," and the President was requested to issue a proclamation accordingly.

The Assembly at the opening of the session of 1800, and after the delivery of the Governor's speech, adopted a resolution that the chair of the speaker and the desk of the clerk be shrouded in black, and that the members wear

crape during the session. Another resolution was adopted providing for a joint committee of both Houses to consider and report the manner in which the 22d of February ought to be observed by the Legislature. A joint committee was accordingly appointed. On the 1st of February, both Houses adopted its report that the 22d of February ought to be observed in a religious manner, that the chaplains of the two Houses be requested to elect one of their number to deliver a sermon on that day suited to the occasion, and that the officers and members of the two Houses attend such service in a body. On the 20th of February, another resolution was adopted that all executive and judicial officers who might be in Albany on the 22d be invited to join in the procession, and attend the memorial services on that day.

On the 21st both Houses adjourned to the 24th.

1800. NOVEMBER. LEGISLATURE, TWENTY-FOURTH SESSION.

JOHN JAY, Governor.

FIRST MEETING.

The Legislature met at Albany on the 4th of November pursuant to adjournment; on the same day the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—The great importance of the business which at stated periods fixed by law, requires your convening at this early season, having heretofore been considered and experienced, it cannot be necessary to enumerate the various considerations which entitle it to serious attention. Connected with this

is another topic, which needs only to be mentioned, to excite reflections which on such occasions will always be seasonable and proper. It is natural that the election of a first magistrate for the nation, should divide even patriots into parties; while not intemperate, few public inconveniences result from them. But history informs us, that when such parties being nearly balanced, become highly inflamed, they often endanger not only the tranquillity, but also the political existence of republics. It is wise to profit by the experience of others. Our governments are yet in a course of experiment, and care should be taken that it be a fair experiment, and that it be not interrupted by those tendencies to innovation which certain passions, when too fervent, sometimes produce.

Since the last adjournment few circumstances have occurred of such a nature as to require being recommended to your particular notice. Providence still continues to bless our country with prosperity, and nothing remains for us but to enjoy it with gratitude and moderation, and in our several stations to endeavor to preserve and advance the welfare of the state. To this end, prudence directs us frequently to review our public affairs, and to correct and amend whatever may appear from experience to be susceptible of material improvement.

On such a review it will probably be found, that among the different classes of public expenditures there are some which demand more order and economy. I allude particularly to the expenses of the counties and towns, and to the manner in which they are at present incurred, liquidated and conducted. It is said, and I fear with too much truth, that in a majority of the counties, these expenses very far exceed the amount of their respective proportions of the state tax. This would not continue to be the case in so great a degree if the accounts against them were as carefully and scrupulously admitted and audited, as those against the state; and if they are controlled and

ordered with equal notoriety, independence and responsibility. The present manner of transacting these affairs is certainly defective, and the interest of the inhabitants requires that it should be revised and amended; and the more so, as certain boards of supervisors have, as I am informed, not hesitated in some instances, to treat the statutes of the state with unequivocal disobedience.[1]

Although our present system of taxation is far preferable to the preceding one, yet time will doubtless discover imperfections in it. The reprehensible inequalities in assessments have already been observed and complained of. Injustice, when committed under the forms and authority of the laws, is always particularly painful and disgusting, and excites emotions which are not friendly to government. I am persuaded that the result of your deliberations on this subject will confirm the public confidence in the wisdom and rectitude of the legislature.[2]

Few circumstances are more essential to the duration of civil liberty and the well being of a free people, than that the departments and officers of their government do, on the one hand, exercise on proper occasions all the powers and authorities constitutionally committed to them, and on the other hand, that they do not exercise on any occasion powers and authorities which are not constitutionally committed to them. Notwithstanding the delicacy of the subject, I think it my duty to submit to your candid and dispassionate consideration, whether the power which has been exercised by the legislature to control the lawful operation of wills and descents in individual cases, by private acts, is not liable to such well founded objections, as that it should not in future be permitted to acquire fur-

[1] Chap. 180, passed April 8, regulated the administration of the financial affairs of counties and towns, prescribing numerous details as to taxation, charges, and duties of officers.

[2] A general act, chap. 179, for the assessment and collection of taxes was passed April 8, 1801.

ther claims to assent and acquiescence on the ground of precedent.[3] That I may be clearly understood, permit me to remark—

That the right lawfully to acquire, inherit and hold, as well as lawfully and freely to grant, devise and dispose of land or other property, is included among those which the constitution intended to secure to every citizen. That valuable civil privileges are by the constitution conferred exclusively on that class of citizens who are freeholders, and which privileges they lose when they cease to have lands of a certain value. That the constitution has ordained and declared "that no member of this state shall be disfranchised or deprived of any of the rights or privileges secured to the subjects of this state by this constitution, unless by the law of the land and the judgment of his peers."[a] That although this provision was doubtless intended more immediately for the security of citizens charged with offenses, yet it necessarily, and with still greater force applies to citizens to whom no offenses are imputed. That by "the law of the land" is to be understood, the public, general, and constitutional laws of the state, equally and impartially affecting all persons and cases under similar circumstances, and to be administered and applied to those persons and cases in the ordinary course of judicial proceeding; and consequently not a mere private act, confined in its object and operation to a particular case, and directly applied to that single case, and to the individuals interested in it, without the intervention of any judicial inquiries or proceedings whatsoever. I am not unmindful of the undoubted authority of the legislature to grant exclusive privileges for public purposes, to corporations, in restraint of the rights of others, and to take land from individuals for public uses on paying the value of it. But there have been instances, and one of recent date, where by private acts passed expressly for

[3] A general act relating to wills, chap. 9, was passed February 20, 1801.

[a] Const. 1777, § 13.

the purpose, infant freeholders have been divested of certain of their lands, and trustees appointed to sell them for their supposed benefit, whereby the nature of their property has been changed, and their civil rights as freeholders of those lands extinguished. Although these private acts were passed from the best motives, and with intent to serve, not to injure those infants, yet how such interferences with private property can consist with the constitution, or with the principles on which the judicial department was instituted, or with the security of property, or with the inestimable privilege which every citizen has, and ought to have, of freely and lawfully disposing of his land by his will, or by voluntarily leaving it to descend according to law, are inquiries which really appear to me to be exceedingly interesting.

On further reviewing the state of our public affairs, it will be found that experience has hitherto evinced the propriety of placing all religious denominations on an equal footing; but the statute enabling them to incorporate, and to make contracts with, and for the support of their ministers, appears to be defective, in not having provided legal means sufficiently competent for executing those contracts with convenience and facility. The importance of this subject is strongly expressed in the preamble of that statute. It declares it to be "the duty of all wise, free and virtuous governments to countenance and encourage virtue and religion, and remove every let or impediment to the growth and prosperity of the people, and to enable every religious denomination to provide for the decent and honorable support of divine worship, agreeable to the dictates of conscience and judgment." I therefore submit to your consideration the expediency of enabling them to cause the sums made payable by such contracts to be assessed on the members of their respective corporations, in proportion to their taxable estates, as

rated in the legal assessments, and to have the same levied and (after the usual deduction for charges) paid to them by the public collectors.[4]

There is another subject which in my opinion is worthy of consideration. When our constitution was formed, the rule established by it for regulating the future number of senators and representatives[b] was founded on reasons which subsequent events and circumstances have materially altered. According to this rule, the number will continue to increase, and will become not only inconvenient, but also unnecessarily expensive, for although a seat in the legislature is a place of honor and not of profit, yet the expenses, however strictly regulated by this principle, will nevertheless far exceed the limits prescribed by prudence and the public good. I therefore think it proper to suggest whether provision should not be made by law for electing a convention for the sole and exclusive purpose of ordaining what shall be the number of senators and representatives at future periods, and of fixing the limits which it shall at no time hereafter exceed.[5]

Your deliberations, gentlemen, will doubtless extend to several objects, respecting which it will be proper for me to communicate to you official information. Care shall be taken that this be done in season, and I assure you that nothing on my part shall be omitted to render this session beneficial to the state and agreeable to yourselves.

JOHN JAY."

Albany, November 4, 1800.

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[4] A general act, chap. 79, for the incorporation of religious societies, was passed March 27, 1801. It did not embody the Governor's suggestion as to assessments for the minister's salary. Paragraph 4 (powers of trustees) was sustained in Dutch Church v. Mott (1838), 7 Paige, 77.

[b] Const. 1777, §§ 5, 12.

[5] Chap. 159, passed April 6, 1801, provided for a convention with power to reorganize the Legislature, and also to determine the true construction of article 23 of the Constitution, relative to the powers of the Council of Appointment. The Convention adopted amendments on both subjects.

SPECIAL MESSAGES.

November 5. To the Senate: Transmitting the resignation of John Lawrence as a United States senator.[6]

November 5. To the Assembly:

"GENTLEMEN.—The act relative to fortifying the port of New York was without delay communicated to the government of the United States, but the removal of the public offices to the city of Washington, and the change which took place in the War Department, have, notwithstanding the ready co-operation of all parties, in some measure retarded the prosecution of that business.

With the concurrence of the Secretary of War, engineers have been engaged, and are now employed in making the necessary surveys, and in devising a plan, which, when finished, will be laid before the President, and communicated to you. When this plan shall have been definitively settled, no time shall be lost in making such preparations for the execution of it, as may be proportionate to the monies which have been, and may in the meantime be appropriated to that object. From the patriotic zeal and important services of the President, to which I have been a witness, I am persuaded that nothing will be wanting on his part to promote and expedite every proper measure for the defence and security of a port which is so exceedingly interesting to the United States in general, as well as to this State in particular.

JOHN JAY."

Albany, 5th November, 1800.

November 8. To the Senate: Expressing his thanks for its address the Governor said:

"When I consider the political fluctuations which distress so many other countries, I become impressed with

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[6] John Armstrong was appointed to fill the vacancy caused by the resignation of Senator Lawrence.

a strong sense of the importance of stability in our public councils; it is an agreeable circumstance that the constitution of State has not been regardless of this object; and that the great and respectable body of citizens whom you represent, and to whom it is particularly interesting, have much to expect from your steadfast attention and adherence to it.

Whether my administration merits the approbation with which you have frequently honored it, is not for me to say; but I cannot omit this occasion of observing, that I shall carry with me into private life, the pleasure of recollecting the marks of confidence I have received from my fellow citizens, and also the pleasure of reflecting that I have served them faithfully. My best wishes for the happiness of our country will not cease or abate, and the most fervent of those wishes will be, that the high degree of liberty and prosperity we enjoy under our present governments, may be so used and enjoyed, as not to incur the displeasure of that great Sovereign of Nations, who remembers, though men too often forget, that liberty and prosperity are of his gift and bounty."

November 8. Thanking the Assembly for its address.

November 8. The Legislature adjourned to meet the last Tuesday of January, 1801.

1801. JANUARY. SECOND MEETING.

February 16. To the Senate:

"GENTLEMEN.—I herewith lay before you a letter from the Inspector of Flour in the city of New York. The information and remarks contained in it appear to me useful and interesting, and proper to be communicated to you.

I am well informed, that by the attention and vigilance of this judicious and upright inspector, the flour of this State, exported from New York, is regaining its credit at

foreign markets. It certainly is desirable that the quality and perfection of all our exports may become such, as by inviting ready sales and superior prices, will necessarily promote both our agricultural and commercial interests.[7]

JOHN JAY."

February 16. To the Assembly:

"GENTLEMEN.—In compliance with the request of his Excellency the Governor, and of the Council of Maryland, I lay before you a copy of certain resolutions of the Legislature of that State, which they desire may be submitted to your consideration.

JOHN JAY."

Albany, 16th February, 1801.

The Maryland resolutions proposed amendments to the Constitution of the United States, providing for the choice of presidential electors by the people by districts to be established by the Legislature of each state, such districts to be equal in number to the number of electors to be chosen in the state; also by requiring the election of representatives in Congress by districts to be established by the Legislature. Persons qualified to vote for members of the most numerous branch of the Legislature were to be qualified to vote for electors and representatives. Electoral and representative districts were not to be changed until after another federal census.[8]

February 17. To the Senate: Transmitting a communication from the inspector of pot and pearl ashes in the city of New York.[9]

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[7] A general act for the inspection of flour and meal, chap. 130, was passed April 3, 1801.

[8] The Maryland resolutions were approved by the Assembly, but the Senate does not seem to have taken any action on them.

[9] A general act for the inspection of pot and pearl ashes, chap. 167, was passed April 7.

February 18. To the Senate: Transmitting a communication from Mr. Gold relative to certain affairs of the Oneida Nation of Indians.

February 23. To the Assembly:

"GENTLEMEN.—From the facts stated in the petition herewith laid before you, as well as from information given to me by the Surveyor General, it would in my opinion, be expedient to enter into such further stipulations with the Indians [St. Regis] mentioned by the petitioners, as may be necessary to obviate the inconveniences which result from the present boundaries of the lands reserved to them. A deputation from these Indians is just arrived here, and it is desirable that they may not be detained longer than the dispatch of this business may require.[10]

JOHN JAY."

Albany, 23d February, 1801.

February 26. To the Assembly:

"GENTLEMEN.—It has generally and justly been considered as highly important to the security and duration of free states, that the different departments and officers of government should exercise those powers only, which are constitutionally vested in them; and that all controversies between them respecting the limits of their respective jurisdictions and authorities, be circumspectly and speedily settled. There are few Constitutions or other instruments, however carefully framed, which are entirely free from ambiguity, and do not contain paragraphs liable to different constructions. Defects and obscurities have been observed in the Constitution of this State, and on certain occasions they have produced inconveniences.

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[10] Chap. 152, passed April 4, authorized the Governor to hold a treaty with the St. Regis Indians for the purpose of negotiating with them for the purchase of a tract of land on Grass River.

The 23d article of it ordains, 'That all officers, other than those who by this Constitution are directed to be otherwise appointed, shall be appointed in the manner following, to wit: The Assembly shall, once in every year, openly nominate and appoint one of the Senators from each great District, which Senators shall form a Council for the appointment of the said officers, of which the Governor for the time being, or the Lieutenant Governor, or President of the Senate, when they shall respectively administer the Government, shall be president, and have a casting voice, but no other vote, and with the advice and consent of the said Council, shall appoint all the said officers.'

Doubts have long existed whether by this article the right of nomination was exclusively vested in the Governor, or whether it was vested concurrently in him and the Council. Questions arose on this article during the administration of my predecessor, and in the month of March, 1794, gave occasion to animated discussions between him and the then Council.

When I came to the Government my official duty made it proper for me to form as correct a judgment on the subject as I possibly could. After having deliberately considered this article, I became fixed in the opinion, that it vested the right of nomination exclusively in the Governor, and for this, among other reasons, that the right to *appoint,* necessarily included the right to *select* and *nominate;* and it gave me pleasure to find, on conferring with my predecessor, that this opinion was strengthened by his informing me that he had always claimed this right, and never yielded or conceded it to be in the council.

Nevertheless, as respectable members of a former council, acting under their oaths to support the constitution, had adopted a different construction of this article, and had actually assumed and exercised this right; it was evident that this was a question on which upright and judi-

cious men might differ in opinion. Being therefore apprehensive that it might, and probably would again produce disagreeable disputes, I thought it advisable to insert the following paragraph in the first speech which I had the honor to make to both Houses of the Legislature, viz.

'There is an article in the constitution, which, by admitting of two different constructions, has given rise to opposite opinions; and may give occasion to disagreeable contests and embarrassments. The article I allude to, is the one which ordains that the person administering the government for the time being, shall be President of the Council of Appointment, and have a casting voice, but no other vote, and with the advice and consent of the said council, shall appoint all the officers which the constitution directs to be appointed. Whether this does, by just construction, assign to him the exclusive right of nomination, is a question, which though not of recent date, still remains to be definitively settled. Circumstanced as I am, in relation to this question, I think it proper merely to state it; and to submit to your consideration the expediency of determining it by a declaratory act.'

Unfortunately this important question was permitted to continue undecided; and, consequently, I could adopt no other rule for my official conduct, than that construction of the article which appeared to me to be the best founded; and which had been adopted as the true construction by my predecessor. I have therefore uniformly held and exercised the exclusive right of nomination; nor have any of the several councils endeavored to assume it, until the 24th day of this month, when the following occurrences took place, viz.

The present sheriffs of New York and Queens, who had been nominated on the 11th instant, were negatived. Benjamin Jackson, who, on the 17th inst. was nominated for sheriff of Orange, was negatived. Certain other nominations were agreed to. Three persons were then success-

ively nominated for the office of sheriff of Schoharie, to wit, Wardell Green, John Ingold and Benjamin Miles, and they were negatived. Col. William Falconer was then nominated for sheriff of Orange, and being negatived, I nominated Col. John Nicholson for that office. On this nomination the Council (except Mr. Sanders) explicitly refused to vote; and one of the members of the Council proceeded to nominate John Blake, jun. for sheriff of that county. Judging it prudent to consider maturely what ought to be my conduct under such circumstances, the Council was adjourned.

After having well considered the subject, it appears to me proper to state these facts to you. While I think and believe, and I most sincerely do, that the right to nominate is vested exclusively in the Governor by the constitution, it ought not, and I am persuaded it will not be expected that I should, by conceding this right or power to any member of the Council, violate my oath to administer the government to the best of my knowledge, in conformity with the powers delegated to me by the constitution.

From what had formerly happened it was not a matter of surprise to me that the Council should claim a concurrent right of nomination with me; but the refusal to vote on one of my nominations, and while it remained undecided, to nominate another person for the same office, were measures which, going to the exclusion of even a concurrent right in the Governor, appeared to me not a little extraordinary.

Many appointments exceedingly interesting to the public, ought soon to be made; but while those gentlemen persist in the course of proceeding which they have adopted, that business must necessarily remain subjected to impediments not in my power to obviate or remove. I therefore submit to your consideration, whether it has not become indispensable, that the merits of these opposite and interfering claims to the right of nomination, should be ascertained and decided without delay.

In whatever constitutional way, whether by a declaratory statute, or by a judgment of law, a decision may be made; and whether it should or should not correspond with the opinion I have expressed, I shall certainly acquiesce in and regulate my conduct by it.[11]

JOHN JAY."

Albany, 26th February, 1801.

February 27. To the Legislature: Transmitting the annual report of the Regents of the University with accompanying documents.

February 27. To the Assembly:

Objections by the Council of Revision to a bill "for establishing and regulating a ferry across the Hudson's River between the town of Mount Pleasant in the county of Westchester and Clarkstown in the county of Rockland."

"Because the bill purports to grant the ferriage exclusively within certain limits on the Hudson's River, in restraint of the rights of persons who may hold lands within such limits of using the waters of a navigable river, and it does not appear that the usual notifications, preceding the bringing in bills by which private rights may be affected, have been published in this instance, and for aught appears to the contrary, this bill, if passed into a law, in its operation may prejudice claims to a like exclusive right to some portion of the shores of the Hudson's river comprised in the limits described in the bill."

The bill was not passed over the veto.

March 2. To the Senate: Transmitting a report from the Inspector General of Provisions.

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[11] See *post*, p. 489, for a note on the relations between the Governor and the Council of Appointment.

March 5. To the Assembly:

"GENTLEMEN.—The arsenal in Watervliet is finished, but a proper fence round it is yet to be made. Armorers will be necessary to keep the arms in order; and it remains for the Legislature to consider, whether a House should not be erected for the keeper, together with shops for the workmen. To me it appears expedient that a manufactory of arms should be established, and connected with the Arsenal.

JOHN JAY."

Albany, 5th March, 1801.

March 6. To the Senate: Transmitting a report from the Inspector General of Staves.[12]

March 7. To the Senate:

"GENTLEMEN.—A number of the Chiefs and Warriors deputed by the Seneca Nation to transact certain business with the Government of the United States, and who are now on their return home, waited on me yesterday and represented,

That they were authorized and desired by the Onondaga nation to inform me of their desire to sell their reserved lands to this State.

That they were authorized and requested by the Cayuga nation to inform me, that having finally agreed among themselves to sell to this State the lands reserved to them, they were now satisfied, and desirous that proper measures should be taken for that purpose.

That the Seneca nation were willing and desirous to sell to this state their tract of one mile wide on the Niagara River from Buffalo Creek to Stedman's Farm

[12] A general act to regulate the culling of staves and heading, chap. 63, was passed March 24, 1801.

By an act heretofore passed I am authorized to treat with the Cayuga nation, but as a part of them opposed the sale, it did not appear to me advisable to proceed in that business.

If the Legislature should conclude to purchase of the Senecas and Onondagas, the same commissioners might also be empowered to treat with the Cayugas. All the purchases might then be made with less difficulty and at less expense than by separate negotiations, at different times and places, and by different Commissioners.

These Chiefs and Warriors earnestly requested me to obtain and transmit to them an explicit answer to their request; that the Legislature would consent to, and confirm a grant which their nation is solicitous to make to Jasper Parish and Horatio Jones, of the land mentioned in their petition to the Legislature.

I promised to communicate these several matters to the Legislature, and to transmit to them such answer as I might be authorized to give. JOHN JAY."

Albany, 7th March, 1801.

March 17. To the Assembly:

"GENTLEMEN.—I lay before you a letter from the Inspectors of the State Prison, dated the 10th, and one from the Mayor of the city of New York, dated the 12th instant; they respect recent escapes from the State Prison.

Escapes from thence have been so frequent, as to have excited anxiety and uneasiness. Unless our present mild system of punishment can be so executed as to ensure the certainty of it, good citizens neither can, nor ought to be satisfied with it. Permit me, therefore, earnestly to recommend this subject to the immediate and serious consideration of the Legislature.[13] JOHN JAY."

Albany, 16th March, 1801.

[13] Punishment for escape was provided for by an act, chap. 58, passed March 21, 1801.

March 28. To the Assembly:

"GENTLEMEN.—For the reasons mentioned in it, I wrote the following letter to the Chancellor, and to the Chief Justice and other judges of the Supreme Court, viz.

'ALBANY, 18*th March*, 1801.'

'GENTLEMEN.—To secure the liberties of the people, and the legitimate rights of their government, against encroachment and usurpation, it has from experience been found necessary to divide the powers of Government into three distinct and independent departments. Aggregately considered, they possess the whole power of Government, and are always in capacity to defend their respective authorities against improper assumptions of power. As this mutual security is not less important to the welfare of the State, than to the orderly and proper discharge of the trusts reposed in them, there results in my opinion a natural and mutual reliance on each other, to support their respective constitutional rights; and to do it by such interpositions as the nature of the case, and the circumstances of the occasion, may render advisable.

These considerations induce me to call your attention to a controversy which now exists between the Executive and the Council of Appointment. The former insists on the exclusive right of naming and proposing to them, for their advice and consent, such persons as he may select for office; while the latter claim a right in each individual member, to select for office, and to nominate to themselves, and for their own advice and consent, such persons as they severally may think proper. Whether the claim of the Executive, or the claim of the Council, is the most consonant with the 23d article of the constitution, is the question between them.

My message of the 26th ult. on this subject to the Legislature, and the proceedings of the two Houses relative to it, are known to you. There appears to be little reason to

expect that they will at present cause the question to be decided, either by a declaratory statute or by judgment of law.

Anxious to discover whether the claim of the Executive to the exclusive right of selection and nomination, is as well founded as I think it is, and being strongly impressed with a sense of the respect due to the sentiments of the Judicial Department, on questions arising from the constitution or laws of our country, I request them on the one I have stated, unless a mode of having it judicially determined should occur to you, and in that case, that you will be pleased to indicate it.

I have the honor to be, with great respect,
Gentlemen,
Your most obedient servant,
JOHN JAY.'

To the Hon. the Chancellor, and to the
Hon. the Chief Justice and other Judges
of the Supreme Court of the State of
New York.'

In answer to this letter I have received the three following, viz.

'ALBANY, *March* 26, 1801.

'SIR.— Soon after the receipt of your Excellency's letter of the 18th instant, addressed to the Chancellor, Chief Justice and other judges of the Supreme Court, Judge Lewis left this city, in expectation of returning on Friday or Saturday next.

Previous to his departure, all the judges of the Supreme Court had a consultation on the subject matter of that letter, and it was then concluded upon by them, that a final determination respecting it should be suspended, until the Chancellor could have an opportunity to attend and consult with them on the occasion. A letter communicating

this circumstance, and a copy of your letter, was dispatched to the Chancellor — his answer to which he requested might be transmitted to you, Sir, with their opinion, which I have now the honor to enclose.

After the departure of Judge Lewis, I received a note from him, desiring me, in case he did not return in time to unite in an answer to your Excellency's letter, to signify it as his opinion, that the Chancellor and Judges ought not to answer the question proposed; as it might possibly come before them in the shape of an impeachment.

It is highly probable that he may upon his return be disposed to express his opinion on this interesting subject more at large; but I did not think myself at liberty, merely on that account, to delay this communication.

I have the honor to be, very respectfully,
Your Excellency's most obedient servant,
JOHN LANSING, JUN.'

His Excellency John Jay, Esquire,
Governor of the State of New York.

'CLERMONT, 21*st March*, 1801.

'SIR.— The Chief Justice having transmitted to me a copy of your letter of the 18th instant, addressed to the Chancellor, Chief Justice and Judges of the Supreme Court, on the subject of a difference of sentiments that prevails between your Excellency and the other members of the Council of Appointment, I regret that my distance and the state of my health does not permit me to consult the judges of the Supreme Court on so interesting a subject as that proposed by your Excellency to our consideration. These circumstances compel me to state my own opinion, without knowing how far it may coincide with that of the Judges.

The constitution not having formed from the Judiciary an advisory Council for the other branches of government, it must have intended that they should lend their support

to, or discourage the usurpation of either, only in their judiciary capacity. In any other their opinions would have no more weight, or be more binding upon the party asking, or opposed to it, than that of any other gentlemen of equal standing in the profession of the law.

If, in controversies between different members of the Executive, the Judges are bound to decide extrajudicially, they are equally bound to give their opinions on the requisition of the Legislature. It is obvious, Sir, that this would by degrees lead them into political controversies, incompatible with the duties of their offices, and convert them into mantelets to receive the shot, while the leaders of parties fought securely under their protection. But Sir, if the Judiciary may constitutionally be called upon by the Executive or Legislative branches of Government, what gives the Chancellor and Judges of the Supreme Court an exclusive right to interpose their opinions? In a constitutional sense, the judges of one Court are no more the judiciary than those of another; tho' the judges of the Courts of Common Pleas have a limited jurisdiction, yet they form an important part of the Judiciary. The members of the Senate make a large majority of the judges in the last resort; if the dignity of the Court and its constitutional competency is to determine the doubt of the Executive, the application should certainly be made, rather to the Court of Appeals in the last resort, than to the Chancellor, and to the Judges who are supposed capable of correcting the errors of the Supreme Court, than to the Justices of that Court. Or have the Executive or Legislative a right to select from the Judiciary the individuals by whose judgment they mean to be guided? If one branch of Government may do this, the other may also make its selection, and thus the judges be set in array against each other.

These, Sir, are the general outlines of my objections to taking upon me to reply to the important questions put in

your Excellency's letter. I must solicit your pardon for the hasty and incorrect manner in which they are put together, while the express that is to carry this is waiting.

I remain, Sir, with the highest respect and esteem,

Your Excellency's most obedient humble servant,

ROBERT R. LIVINGSTON.

His Excellency John Jay, Gov. &c. &c.'

'ALBANY, *March* 26, 1801.

'SIR.—We have the honor of your Excellency's letter of the 18th inst. directed to the Chancellor, and to the Chief Justice and the other judges of the Supreme Court, requesting their sentiments on the question therein stated by your Excellency, unless a mode of having it judicially determined should occur to them, and in that case that they would indicate it.

No mode occurs to us, to be adopted by your Excellency, to have the question judicially determined. Still we conceive that we cannot comply with your Excellency's request, inasmuch as any opinion from us on the question, unless in a judicial procedure, or in the Council of Revision, considered as a mean to declare, and thereby to establish the sense in which the constitution ought to be received and observed, would be without effect. We cannot therefore view the present as one of the cases (for we will not pronounce there cannot be any) in which the Governor may require the advice of the Chancellor and Judges of the Supreme Court, on the laws and constitution, in the execution of his office.

We have the honor to be, with great respect,

Your Excellency's most obedient servants,

JOHN LANSING, JUN.
EGBERT BENSON.
JAMES KENT.
JACOB RADCLIFF.

His Excellency Governor Jay.'

It appears to me proper that this correspondence should be known to the Legislature, and therefore it is communicated thus particularly.

On considering it in connection with my message of the 26th of last month, it gives me pleasure to believe, that I have done whatever my duty required, relative to the claim, which, for the first time during my administration, has interrupted and suspended the business of appointments. A like sense of duty will keep me mindful, that as I received and have constantly possessed and exercised the exclusive right of nomination, as one of the rights belonging to the office which I hold, so I am under the highest obligations to transmit it unimpaired to my successor, unless the office should, in the meantime, be divested of it by competent authority.

On whatever foundations or principles this right may rest, or whatever inducements may, at this particular period, have caused a dormant claim to rise in opposition to it, the rules of official decorum will not, in my opinion, permit the Governor of the State to embark in disputations concerning them. It cannot therefore be proper for me to take other notice of the excusatory statements and reasonings, (irregularly sent to the House of Assembly, by three members of the Council) than to express my regret that those statements and reasonings are less correct, liberal and candid than they might have been.

But it cannot be improper for me to give and repeat positive assurances that I shall be ready to dispatch the necessary appointments whenever, and as soon as a majority of the Council shall be willing to let that business again proceed in its accustomed course, until their claim to change that course shall be decided in their favor. I will cheerfully do whatever may depend on me to facilitate a constitutional decision of their claim; and whatever that decision may be, I shall acquiesce in it.

How, or in what manner such a decision is to be had by judgment of law, still remains to be ascertained. It is as plain to me as it seems to be to the Judges, that there is no mode to be adopted by me, of having the question judicially determined; but that no such mode can be devised and adopted by the Legislature, would be an extraordinary position.

There is a mode which has been much spoken of, and which appears to me to deserve attention, viz. That an act be passed to authorize and direct the Supreme Court to try and determine the question, on a proper issue, to be devised by them; and that their judgment be immediately removed to the Court of Errors, and there receive an ultimate and final decision.

The embarrassments which the public must experience from leaving this question unsettled, and my solicitude to prevent the duration and increase of those embarrassments will, I hope, apologize for the earnestness with which I again recommend this interesting subject to your consideration. [See note 11.]

JOHN JAY."

Albany, 28th March, 1801.

March 30. To the Assembly:

Objections by the Council of Revision to a bill "to authorize John Marshall and Gilbert Brown to erect a mill dam and grist mills across and upon the Mill Creek, in the town of Rye, county of Westchester, and to enable certain persons interested in land contiguous thereto, to assent to the same." [14]

"Because the bill purports to vest a power in trustees to dispose of the real estate of minors named in it in fee, either as a mere accommodation to others, or with intent to promote the interest of those minors, which, in either alternative, is repugnant to the salutary policy of the law

[14] The Marshall and Brown grist mill bill was passed over the veto, and became a law, chap. 136, on the 3d of April, 1801.

restraining infants from alienating their real estates and which ought to render their consent to an alienation by trustees equally unavailing.

Because it is of much greater importance to the public, that the estates of infants should be preserved unimpaired, than that speculative, or even solid advantages should be obtained for some of them, at the expense of endangering the uniform operation of a rule, the strict observance of which is so well calculated to inspire the confidence of parents that the estates they transmit by inheritance, or devise to their children, are protected from being divested by the fraud or indiscretion of those to whose care their interests are intrusted during their minority, but the interference of the Legislature for purposes of that kind, are the more dangerous, as the real intent may be so masked as to render it impracticable to discriminate between the ostensible and latent motives which promoted an application for their interposition."

March 31. To the Assembly:

Objections by the Council of Revision to a bill "concerning the proof of deeds and conveyances," and a bill "concerning mortgages." [15]

"Because its provisions are calculated to weaken the security of titles to real estates, by vesting a power to take proofs and acknowledgments of the execution of conveyances in a number of officers, dispersed, not only through every county of this State, but through the whole extent of the United States, whose signatures and official characters must, of necessity, in many instances, be totally unknown to the recording officers, and hence put it entirely

[15] These bills were not passed over the veto, but other bills on the same subjects were afterwards passed, the bill relating to deeds becoming chap. 155, and the bill relating to mortgages becoming chap. 156.

out of their power to distinguish forged from genuine certificates of such proofs or acknowledgments.

Because, as forgeries committed out of the State are not offences punishable by its laws, the perpetrators of acts of that kind may perfect them by proof or acknowledgment without being obliged to expose themselves to be apprehended and punished within it, in case of detection, and thus the principal agents in the commission of forgeries may escape with impunity.

Because the judicial officers of the other states are not punishable for mal or corrupt conduct in the execution of this trust, nor can they be compelled, by legal process, to appear in the courts of this State for the purpose of disproving any act falsely imputed to them, which will, in a great measure, render the recording of conveyances, although they should be forged, under certain circumstances, decisive, as the destruction or concealment of those conveyances leave the records thereof to be used as evidence of their having existed, and may preclude the possibility of an inspection of the original, and the circumstances derived from that source, which frequently expose forgeries to effectual detection. This objection also extends in a degree to the judges of the supreme court of the United States, although all recording and other officers of the State are bound to take notice of their appointments; but, from the smallness of their number, and the notoriety of their public characters, such extensive evils are not to be apprehended, although it would be more consistent with the precautions devised in suppression of fraud in other parts of the bill to oblige all grantors, residing in the United States, to have their conveyances proved or acknowledged within this State before the same should be permitted to be entered of record.

Because the prohibition to record deeds, other than such as have been proved or acknowledged in the mode prescribed by the bill, is liable to doubts whether it does not

render all the proofs or acknowledgments of deeds, taken prior to the first day of May, one thousand seven hundred and ninety-seven, and not actually recorded, nugatory, and of consequence incapable of being used in evidence, merely on the credit of such proofs or acknowledgments, as well as divesting the persons entitled to the estates, conveyed by such deeds, of a right they had acquired, under the then existing laws, of having them entered on the records — an operation the more injurious to persons holding under such conveyances, as it leaves them destitute of the evidence on which they have long depended, in that security which a consciousness of having perfected their conveyances in the mode required by law, could not fail to inspire and which evidence they may now be unable to replace, in consequence of lapse of time, and the death or absence of the parties and witnesses.

Because it necessarily makes it the duty of the recording officers to decide on the authenticity of a certificate, purporting that a deed had been duly proved before the mayor of the city of London, and that without any means, derived either from the annexation of the city seal or otherwise, of knowing or ascertaining his handwriting.

And because, the more the number of officers to prove deeds is increased, the more facility to forgery will be given, and the more will the means of detecting and checking that dangerous and prevailing offence be diminished.

As the foregoing objections apply to the bill entitled 'An act concerning mortgages,' the Council object to the same for the like reasons."

April 7. To the Senate:

Objections by the Council of Revision to a bill "authorizing masters in chancery to appoint guardians for infants."

"Because, although the attainment of the principal object of the bill is calculated to promote public conveni-

ence, it is not sufficiently provisional. The bonds directed to be given by the guardians for the faithful discharge of their duty are not ordered to be filed in any permanent public office for safe keeping, but remaining in the hands of the master as a mere official personal trust, will be carried with them to whatever place they may remove within this State; and in case of their migration from, and death out of this State, these bonds and other papers would pass into the hands of their executors or administrators, for whose care and fidelity there cannot be adequate security, and who may be in situations not conveniently accessible to the parties, notwithstanding the jurisdiction of our courts:

Because the reference to analagous cases for the purpose of ascertaining the masters' fees, is too vague to afford a definitive rule to prevent embarrassments to the masters, and to protect the citizens applying for their interposition from oppressive exactions."

The bill was not passed over the veto.

April 8. The Legislature adjourned without day.

RELATIONS BETWEEN THE GOVERNOR AND COUNCIL OF APPOINTMENT.

On the 27th of February, the Assembly considered the special message on the Council of Appointment (*ante*, p. 472), and rejected a motion that it is "expedient to pass an act declaring the true intent and meaning of the 23d section of the Constitution, relative to the person or persons in whom the right of nominating all officers, to be appointed by the Council of Appointment, is vested."

The following resolution was adopted:

"*Whereas*, his Excellency the Governor, by his message of the 26th instant, has suggested some impediments to

the further proceedings of the Council of Appointment, and has submitted to the consideration of the Legislature, whether it is not become indispensable that the merits of the opposite and interfering claims to the right of nomination should be ascertained and decided without delay:

Therefore, Resolved, as the sense of this House, That the Legislature have no authority to interpose between the Executive and the Members of the Council of Appointment, touching the right of nomination, or to pass a declaratory act, defining the powers of the said Council, or prescribing the manner in which the same shall be exercised."

On the 7th of March, the Senate adopted the following:

"*Whereas,* doubts are entertained whether the President of the Council of Appointment has, by the constitution,[c] the sole and exclusive right of nomination to office, or whether such right is equally and in common vested in the said President and the members of the Council respectively, or vested in the said Council exclusively: therefore,

Resolved, That a joint committee of the Senate and Assembly be appointed to inquire what has been the practise relative to nomination to office in the Council of Appointment; that such joint committee have power to send for papers and records, and report a state of facts to the Legislature, with their opinion of a fit and proper mode of determining the said constitutional question."

The resolution named the Senate members of the committee. The Assembly did not concur in this resolution.

On the 17th of March, three members of the Council of Appointment sent the following communications to the Assembly:

ALBANY, *March 17th,* 1801.

SIR.— When the Council of Appointment adjourned, on the 24th of February, his Excellency the Governor promised to convene them soon. We were at that time satisfied with the assurance, and expected that long before this time we should have been summoned; but as this expectation has not been realized; and as the civil lists of eleven

[c] Const. 1777, § 23.

counties have expired, or soon will; and the Mayors of four cities, and eight sheriffs ought to be appointed; and as the pecuniary interests of the State may be essentially injured by the non-appointment of the Superintendent of the Salt Springs, and the auctioneers of the city of New York, we consider it a duty which we owe to ourselves, and a mark of respect due to the Honorable the House of Assembly, to explain the reasons of our conduct. Under these impressions, we beg leave to submit through you, the enclosed communication; and have the honor to be,

With the most perfect respect,
Your most obedient
Humble servants,
ROBERT ROSEBOOM,
AMBROSE SPENCER,
DE WITT CLINTON.

The Honorable the Speaker of the Assembly.

"The subscribers (being a majority of the members of the Council of Appointment) having seen a message of the 26th of February, from his Excellency the Governor to the Legislature, respecting interfering claims in the appointment of officers, deem it proper and necessary to assign the reasons of their conduct. A more comprehensive statement of facts, than his Excellency has thought proper to give, will be essential to a just estimation of the causes, which have produced the difference; and while they feel a thorough conviction, that their claim rests upon constitutional ground, they are also fully persuaded that no proper measure has been left unessayed on their part to cultivate harmony and concord, and to justify the confidence which has been reposed in them by their country.

At the first meeting, his Excellency thought proper to nominate a person for Sheriff of Queens county, and on being told by a member of the Council that he was not prepared on that question, his Excellency, of his own

authority, directed the Secretary to enter the nomination on the minutes. It being mentioned that the entry of nominations was unusual and unnecessary, his Excellency produced the eighth section of the act to organize the government of this State, as directing the measure. It was evident that this construction had not even the merit of plausibility; the third section of the act declares, that the surrogates 'shall be nominated and appointed by the Council of Appointment;' and the section referred to by his Excellency, directs 'that on all nominations and appointments to offices within this State, by the Council of Appointment, the order or orders of the said Council thereupon, shall be fairly written and entered in the minutes of the proceedings of the said Council.' The nominations of the Council, not of the Governor, are alone recognized by this act, and as nominations and appointments are used copulatively, and the entry required to be made, is to be consequent on both, the strangeness of the exposition, as well as the singularity of the measure, created a suspicion that some result equally as extraordinary was contemplated; especially as the establishment of the principle went to declare a violation of law in himself, and all the Councils which had assembled under his administration. After some conversation, as it was earnestly urged by his Excellency, and the Council considering that they had it in their power to control their minutes, and thereby correct any evil that might in future arise, consented that entries of nominations acted upon should be made, expressly declaring, however, that no inference of an admission of a right of nomination in the Governor should be drawn, but intending only from motives of courtesy, to consider his nominations in the light of recommendations, proceeding from the chief magistrate of the State, and therefore, unless under peculiar circumstances, entitled to respectful consideration. After this concession was made,

his Excellency proceeded to nominate eight persons for sheriff of the county of Dutchess, which were successively rejected; none of the gentlemen nominated, were known to the Council, as persons willing to accept the office if appointed; all of them but one, belonged to the same party with his Excellency, while on the other hand, three respectable gentlemen of contrary political opinions, were known candidates, and competent characters to fill the office. All these circumstances combined, induced an opinion, that his Excellency had predetermined, either to break with the Council or to exact a subservience to his views; and that those views would either proceed immediately in the direction, or be intended to subserve the purposes of party.

At this and subsequent meetings of the Council, sixteen sheriffs, and near fifty other civil officers were appointed upon the recommendation of the Governor; and as the constitutional period for the sheriffs of Orange and Schoharie had nearly expired, some conversation took place on the 17th of February, respecting suitable successors. His Excellency recommended Benjamin Jackson as Sheriff of Orange, and on being told by some members of the Council, that he was unknown to them, but that they could recommend John Blake, Jun. from a personal acquaintance as a character well qualified, and as combining the confidence of the county, the further consideration of this appointment was postponed: Peter I. Vrooman was at the same meeting mentioned by a member as a suitable sheriff for Schoharie. On the 24th of February, four nominations of His Excellency for sheriff, and six for coroners, were sanctioned by the Council; two for sheriff were overruled; the former mode of keeping the minutes of the Council was re-established. Three persons were recommended by his Excellency for Sheriff of Schoharie, and rejected, but Peter I. Vrooman was not mentioned by him. His nomination of Benjamin Jackson for Sheriff of Orange, being renewed and rejected he nominated William Faulk-

ener, which terminating in the same manner, John Nicholson was then named by him. It then became evident that his Excellency had resolved, either not to name at all the persons agreeable to the majority of the Council, and in every respect unexceptionable, or to nominate them after certain purposes of excitement were answered. The Council, under these peculiar and extraordinary circumstances, interfered and refused to vote upon this proposition. It was mentioned that their attention had never been turned to Mr. Nicholson and Mr. Faulkener, that neither was known as a candidate, and that probably neither would accept; and it appears that Mr. Nicholson, so far from being an applicant, is an advocate for the appointment of the person recommended by the Council. The recommendation of Mr. Blake was now brought forward, in the shape of a motion to appoint; and his Excellency interfering with the claim of exclusive nomination, and requesting time for consideration, the Council adjourned. It will appear from this statement, that the question between him and the Council was, whether the right of exclusive nomination is vested in him. The claim of concurrent nomination was never suggested by his Excellency, nor considered by the Council, as the real point in contest. Although they do not believe that any right of nomination in strictness exists in the Governor at all, yet for the sake of concord, they have in every instance, except in the case of Mr. Nicholson, admitted it to be concurrent in him, in its fullest extent; and although they are persuaded that it is exclusively entrusted to the Council, yet they have not, except in that solitary instance, exercised it. The like moderation, and the same spirit of conciliation, on the part of his Excellency, would have suppressed every source of difficulty, and every motive to disagreement.

After this preliminary narrative of facts, the Council consider it their duty to state their reasons against the Governor's pretended right of exclusive nomination.

The right of nomination, in the sense contended for by his Excellency, amounts even to more than a concurrent vote. No proposition for making appointments can proceed from any other person than the Governor; all must originate from him, and the Council will be only invested with the power of affirming or rejecting propositions submitted to them. The insignificance to which a construction of this kind will reduce them, may be collected from cases where the right only of negativing bills exists; their powers will be merely passive or negative; all the active, positive, and vital power in appointments will be in other hands. A consideration of the constitution of the Council, and the reason of its erection, will at once decide whether this state of things was contemplated by the framers of our Government.

The Council are to consist of one Senator from each Great District, selected annually by the Assembly, and their President is the Chief Magistrate of the State, with a casting voice, but no other vote. Nearly the same phraseology which constitutes the Lieutenant-Governor President of the Senate, and gives him a casting vote, is applied to the Governor as President of the Council of Appointment. The Governor is not made President of the Council of Revision, by the constitution;[d] he of course is to be considered upon the same footing as any other member, with the right of originating objections to bills, and with the right of voting upon any question that may be discussed; if it had been contemplated to place him in the same, or in a higher position, in the Council of Appointment, a correspondent or applicable phraseology would have been adopted. The Council, as thus presented to our

[d] Const. 1777, § 3.

view, would naturally be considered in the same light, as the Senate or any other deliberative Assembly. They are selected from the four Great Districts of the State, and are therefore supposed to be possessed of a knowledge of suitable characters for office; and yet all this information, upon the construction of his Excellency, is to be passive, inert, and inactive. They can do nothing of themselves without the permission of their President. The most proper appointments will not depend upon their agency. Everything must flow through the channel of the Governor; and that clause of the constitution, which provides against an appointment to the Council, for two years successively, in order, as it has been supposed, to guard against a pernicious spirit of favoritism, and an undue accumulation of patronage in a few individuals, must be frivolous and nugatory.

We hold the following rules of construction to be undeniably just: when two parts of an instrument are apparently contradictory, that exposition which will reconcile them ought to be adopted; in doubtful cases, that which will secure the end intended, is the most proper. A greater power cannot be intended, when a less one is expressly granted with words of exclusion. When a part of an instrument is doubtful, its meaning can be best collected from another part, which treats of the same or an analogous subject. With these rules of construction in view, let us proceed to a particular analysis of the article relative to appointments.

The first part of the article ordains, 'That all officers other than those who by this constitution are directed to be otherwise appointed, shall be appointed in manner following, to wit: the Assembly shall, once in every year, openly nominate and appoint, one of the Senators from each Great District, which Senators shall form a Council for the Appointment of the said officers, of which the Governor, for the time being, or the Lieutenant-Governor,

or the President of the Senate, when they shall respectively administer the Government, shall be President, and have a casting voice, but no other vote.'[e] Here if the Constitution had stopped, no doubt would exist, but that the appointment of all officers is in the Council, subject to the casting vote of the Governor; but it is contended, that the subsequent part, 'And with the advice and consent of the said Council, shall appoint all the said officers,' takes away at least a moiety of the power which otherwise would have been in the Council, and vests in the Governor the exclusive right of nomination. It is manifest, however, that this exposition cannot be admitted. First, it derogates from the power of appointment previously vested in the Council; secondly, it will communicate by implication a greater power, when a less one is granted by an express exclusion. The pretended right of nomination is more than a casting and even more than a concurrent vote, but the clause says, that the Governor shall have no other voice, than a casting vote. Thirdly, the casting vote is granted to him emphatically, and is therefore intended to be a substantial power; on the plan of exclusive nomination, it becomes a mere matter of form, the sense of the Governor being signified previous to the equal division. Fourthly, the words nominate and appoint, are used in the beginning of the article, in relation to the mode of constituting the Council; if it had been contemplated to clothe the Governor with a power of nomination, surely they would have been adopted in the subsequent part. It being then obvious that this explanation creates a collision between different parts of the constitution, one ought to be preferred which will produce harmony. The words advice and consent have an active as well as a passive meaning. In the present case, they mean an expression of the will of the Council. If the clause

[e] Const. 1777, § 23.

should read, and with the will of the said Council shall appoint all the said officers, or which is the same thing, with the said Council, would any difficulty have occurred to reconcile it with the other? If advice and consent, in this case mean the same thing as will, then the signification of the clause may be discovered by the substitution. The Governor may with propriety, in a constitutional sense, be said to appoint with the Council. First, his presence is at all times necessary to make appointments, although his actual assent is not; and secondly, in case of an equal division, his actual assent is essential: the clause can therefore be only viewed as a mandate to the Governor to meet with the Council, and with them to make the requisite appointments, as previously prescribed. This construction derives force from a parallel case to be found in Smith's History of New York, (page 231) which contains the King of Britain's commission to the Colonial Governor. 'And you the said Sir Danvers Osborn, by and with the consent of our said Council and Assembly, or the major part of them respectively, shall have full power and authority to make, constitute and ordain, laws, statutes and ordinances for the public peace, welfare and good government of our said province.' Will any one pretend that this grant conveyed to the Governor the exclusive right of originating or proposing laws? Or will any man say that it meant more than this, that the Governor should be concerned in legislation, in the mode previously designated by the unwritten constitution of the Colony? Altho' we believe that this exposition is just and legitimate, yet it may be proper to mention, that another has obtained the sanction of many judicious men; commission and appoint, are sometimes used synonimously; an adoption of this meaning in the present case, will at once reconcile every apparent incongruity.

The end intended by the constitution is good appointment to office; and if the means prescribed to attain this

object are doubtful, then such a construction ought to prevail as will most effectually, and in the best way, accomplish the purposes of the constitution. The power of nominating in the Governor, and the power of rejecting in the Council, may frequently lead to no appointments at all; whereas upon the other hypothesis, this evil can in all probability never be experienced, and the combined knowledge of characters, derived from the situation and numbers of the Council, renders them a more competent organ for the selection of proper officers.

But the framers of the constitution have, in the 33th article, given us their own explanation. Treating of the charter officers of the cities of New York and Albany, they declare, 'That all such of the officers described in the said charters respectively, as by the terms of the said charters were to be appointed by the Governor of the colony of New York, with or without the advice and consent of the council of the said king, in the said colony, shall henceforth be appointed by the council established by this constitution for the appointment of officers in this state, until otherwise directed by the Legislature.' Language cannot be more explicit.

Our opinion is further corroborated from a consideration that if the constitution had really intended to clothe the Governor with the right of exclusive nomination, it would have been done in express and unequivocal terms. So great, so active, so controlling a power, would not have been committed to the uncertainty of inference, to the ambiguity of conjecture, or to the hazard of competition. When this or a similar power is granted in other constitutions, it is communicated in such a way as to leave no room for doubt or uncertainty. The constitution of Massachusetts says, that 'all judicial officers, the Attorney General, the Solicitor General, all sheriffs, &c. shall be nominated and appointed by the Governor, by and with the advice and consent of the Council, and every such nom-

ination shall be made by the Governor, and made at least seven days prior to such appointment.' And the constitution of the United States declares, that 'the President shall nominate, and by and with the advice and consent of the Senate, shall appoint, ambassadors, &c., and all other officers of the United States, whose appointments are not otherwise provided for, and which shall be established by law.'[f]

Our constitution[g] ordains, that 'where the duration of any office shall not be ascertained, such office shall be held during the pleasure of the Council of Appointment;' and it is conceded by his Excellency that the Council have the sole right of removing from office. We should suppose, when not expressly provided for to the contrary, that the powers of appointment and displacement are necessarily to be considered as placed in the same depository; and that this is the real design of the constitution may be deduced from the next antecedent article, which declares, 'that the register and clerks in chancery be appointed by the chancellor, the clerks of the supreme court by the judges of the said court, the clerk of the court of probates by the judge of the said court and the register and marshal of the court of admiralty by the judge of the admiralty. The said marshal, registers and clerks to continue in office during the pleasure of those by whom they are to be appointed as aforesaid.'[h] If a majority of the Council can constitutionally remove from office, without the intervention of the Governor, it can scarcely be doubted under these circumstances, but that the power of appointment is exclusively deposited with them.

With regard to the practice which has obtained under the constitution, as it has been in both ways, much has been and much may be said. The mode of entering ap-

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[f] U. S. Const. art. 2, § 2, clause 2.
[g] Const. 1777, § 28.
[h] Const. 1777, § 27.

pointments on the minutes, has been, we believe, uniformly in this way: '*Resolved,* that A. B. be and he is hereby appointed of the county of .' This entry being without reference to nominations of the Governor, shows the sense of former Councils. It may be true that the former Governor did claim the right of nomination, but it is certain that former Councils have exercised it concurrently with him. A prominent case may be found in the appointment of a judge of the supreme court, which, upon the principles now set up, must have been unconstitutional. In all the fluctuations of party under his administration, and in times when councils exercised the whole power of appointment, no impediment to the execution of the laws, and no obstruction of the course of public justice, were experienced from the want of necessary officers. Shall it be said that the first Council assembled under the present Governor, differing from him in political opinion, is to witness scenes productive of the most serious consequences to the welfare of the community?

As the opinions now expressed have been formed long before we were members of the Council, we cannot be supposed to be actuated by an ambitious competition for power, or by an unwarrantable spirit of party. Our obligations are as sacred as his Excellency's; our convictions of duty as clear and impressive; and our line of conduct as plain and perspicious. We have been honored by our country with an important trust, and we shall not betray that trust into the hands of any man.

ROBERT ROSEBOOM.
AMBROSE SPENCER.
DE WITT CLINTON."

On the 6th of April the Senate adopted the following resolution, but it was not concurred in by the Assembly:

"*Whereas,* a difference of sentiment subsists between his Excellency the Governor and the majority of the members of the Honorable the Council of Appointment, relative to the right of nomination, by reason whereof the business of the said Council is at present interrupted. *And whereas,* it is essential to the public good that that interruption should immediately cease. *And whereas,* the Legislature cannot now adopt or concur in any measures to produce a seasonable and legal decision on the said right of nomination. *And whereas,* the right has been uniformly claimed, and generally exercised, as well by the late, as the present Governor of this State: Therefore,

Resolved, That, in the opinion of the Legislature it would be proper for the Members of the Honorable the Council of Appointment to signify to his Excellency the Governor their willingness to waive the aforesaid question, relative to the right of nomination, and to proceed in the business of the said Council in the manner heretofore generally practised, until a legal decision can be had on that question."

While this subject was under consideration, the Senate rejected the following resolution offered by De Witt Clinton:

"*Whereas,* a difference has arisen between the Governor and the Council of Appointment respecting the exclusive right of nomination claimed by the former, which has suspended all appointments since the 24th of February. *And whereas,* it is not in the power of the Legislature to pass a law declaratory of the meaning of the constitution, or to prescribe any other mode than that of calling a convention for the purpose of settling this controversy. *And whereas,* great and extensive injuries may result to the community from this difference, whereby the House of Assembly may deem it their duty to interfere in the capacity of the grand inquest of the State, and to institute an impeachment against the delinquent or delinquents, before the court for the trial of impeachments and the correction of errors. *And whereas,* the Senators, together with the Chancellor and Judges of the Supreme Court, compose the said court for the trial of impeachments and the correction of errors. *And whereas,* the Legislature

have made provision by law for calling a convention to explain the true meaning of the constitution in this respect, and for other purposes, and thereby have, in their legislative character, adopted the only measure in their power to correct the evil: Therefore,

Resolved, as the sense of the Legislature, That for the Senate and Assembly to pre-judge, in their legislative capacity, the present controversy, by declaring an opinion on either side, will, as it may come before them in a judicial shape, be a sacrifice of principle, and a violation of duty, will be fruitless and unavailing, will detract from the dignity, respectability and impartiality of the Legislature, and will have no other effect than to declare to their constituents that they are capable of the gross impropriety of wantonly deciding questions of the highest importance to the community in an unconstitutional way, without due investigation and consideration, without hearing the parties to the controversy, and without any possible advantage to the community."

The Senate also rejected a motion by Mr. Clinton to amend the pending resolution by expunging after the word nomination to the end, and to substitute the following:

"*And whereas* this is the first time that appointments have been suspended since the organization of the government; and the practice has hitherto been, notwithstanding occasional differences of opinion between the Governor and Councils, touching the right of nomination, so to accommodate, as to prevent any injurious consequences to the community: Therefore,

Resolved, That in the opinion of the Legislature it would be proper for his Excellency the Governor to convene the Council, and to signify to them his willingness so to accommodate with them respecting the right of nomination as to prevent a further interruption of appointments, until a constitutional decision can be had on that question."

On the 8th of April, the Assembly adopted the following preamble and resolution:

"*Whereas* it appears to this House from two several messages of his Excellency the Governor, and from a com-

munication of a majority of the members of the Council of Appointment, that the said Council have not been convened since the 24th of February last, for the performance of the duties committed to them by the constitution; and that a controversy has arisen between his Excellency and the Council respecting the right of nomination, which has created a new and unprecedented crisis in our public affairs; that notwithstanding speculative differences may hitherto have existed between the former Governor and former Councils on this subject, yet, that in practice, the business of appointments was never suspended; and that the present is the first Council, assembled under the present Governor's administration, who have ever experienced any embarrassments in the execution of their official duties; *and whereas,* by the constitution and laws of this state, at fixed periods certain appointments are enjoined and required to be made, yet the judges and justices of several counties, the mayors of the four cities, eight sheriffs, the auctioneers of this State, and a number of other officers, have not been appointed at the times prescribed by the said constitution and laws: *And whereas,* a high responsibility must rest either on his Excellency or the Council, and such injurious consequences may result as will induce the next House of Assembly to prefer an impeachment against the delinquent or delinquents: *and whereas,* the Senate principally compose the court for the trial of impeachments; *and whereas,* the Legislature have, by passing a law for calling a convention, made the only provision in their power for the correction of this evil; *and whereas,* this House did, on the 27th of February last, adopt the following resolution, to wit: *Resolved,* as the sense of this House, That the Legislature have no authority to interpose between the Executive and the members of the Council of Appointment, touching the right of nomination, or to pass a declaratory act defining the powers of the said Council, or prescribing the manner in which the same shall be exercised;' which resolution was transmitted to the Hon. the Senate; *and whereas,* since the passing of the said resolution, the Hon. the Senate have transmitted to this House two resolutions, having a tendency to produce an interference in the said controversy:

Therefore, Resolved, That this House do persist in their said resolution."

Chapter 159, passed on the 6th of April, provided for a Convention charged with the duty of determining the true construction of Article 23, relative to the powers of the Council of Appointment. This Convention was held and adopted an amendment determining that each Senate member of the Council, equally with the Governor, had power to make nominations.

GEORGE CLINTON, Governor.

The Legislature met the 26th of January, and on the same day Governor Clinton* delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—I cannot refrain, at this first opportunity presented me for meeting the legislature, from congratulating you upon the flourishing condition of the United States. Under an administration extensively possessing and highly meriting the public confidence, we have reason to believe that the external and mutual relations of the states will command every proper attention, and engage every proper support.

Our participation with our sister states in the general prosperity ought not, however, to diminish our exertions in cultivating those peculiar advantages with which we are favored by the Supreme Dispenser of all good; and in obeying the injunction of the constitution to recommend such matters to the consideration of the legislature as shall appear "to concern the good government, welfare and prosperity of the state." I feel confident that nothing in your power will be wanting for the promotion of those important objects.

The situation of our finances will demand your particular attention. Claims to a considerable amount, arising from moneys borrowed and other sources, exist against the state, and have induced a resort to taxation for the last two years. These demands ought to be satisfied as early as a due regard to general convenience will admit, and considering our resources, there is reason to believe that they could have been soon extinguished without laying any additional burthens on our constituents,

* For portrait see ante, p. 1.

were it not for the engagement to expend in fortifications a very large sum, supposed to be due to the United States. How far this balance was originally just, or how far it will or ought to be exacted from this state exclusively, are questions which it is not within my province to decide. The proceedings under the act providing for the extinguishment of this demand, will be laid before you, and if the public exigencies shall require a continuation of taxes, I submit to the legislature whether a revision of the system will not be indispensable in order to render assessments more equal and just, collections more speedy and operative, and both less expensive.[1]

In taking a review of the resources of the state, and in devising appropriate improvements, a variety of subjects will necessarily engage your attention.

The claims of dower by widows of attainted persons have assumed so serious an aspect, that the commissioners appointed by law for their liquidation and settlement, deemed it expedient at the last session to submit them to the decision of the legislature; and as nothing was definitively arranged at that period, a great number of suits have been commenced against persons deriving title from the state. While the honor of the state demands that all proper claims should be satisfied, an attention to public economy equally requires that the treasury should be guarded against improper or fraudulent demands. In the course of the session, this subject will no doubt receive an attention commensurate with its importance.[2]

The benevolent views of government in substituting to a certain extent the punishment of imprisonment instead of death, have been in a great measure realized, as far as we can judge from experience. But it may be well worthy of consideration whether the expenses of the establish-

[1] The tax law was amended by chap. 118, passed April 5.

[2] Chap. 82, passed March 31, was intended to facilitate the discovery and sale of the estates of attainted persons.

ment have not been unnecessarily surcharged by confining in the state prison petty offenders, sentenced to an imprisonment exceeding a year, and whether every useful object would not be equally well attained, and at the same time a considerable expense in conveyance and maintenance saved, by a different regulation with respect to this class of offenders. When on this subject, it may be proper to observe, that as the establishment of a military guard has been deemed essential for security against escapes, it is necessary that some definite system of discipline and government should be prescribed to give efficacy to that institution.[3]

It is to be regretted that the sessions of the legislature should be protracted by the consideration of claims which have been frequently decided against; as if importunity would ensure success, and as if frequency of application would eventually weary into compliance; the attention of the legislature has been too much diverted from important objects of public policy by applications which have been renewed from session to session. The right of petitioning is a sacred right, but its abuses ought not to be countenanced; some remedy for this evil would be highly expedient, if the nature of the case can admit of one without a collision with an essential right of every citizen.

The provision in the act concerning slaves and servants, authorizing the owners of slaves, under certain circumstances to abandon them to the state, will prove a source of growing expense, and will require particular interference, and I feel happy in the persuasion that the reasonable claims of individuals may be fully attended to in this case, without invading the rights of humanity, or the pecuniary interests of the state.[4]

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[3] Additional regulations concerning prison management were prescribed by chap. 37, passed March 16, and the subject of a state prison guard received consideration in chap. 68, passed March 30.

[4] Abandoned children born of slaves were provided for by chap. 52, passed March 26.

The situation of the salt springs also deserves your attention; hitherto they have been a source of inconsiderable profit. In accommodating a large portion of our fellow citizens with a necessary article of life, an important object is indeed attained, the benefits of which would, however, be enhanced, if at the same time an additional revenue could accrue to the public; and there is reason to believe that this would be the result under proper regulation and management.[5]

In your deliberations on the subject of public disbursements, several subordinate points will present themselves to your consideration. As the duties of the five judges of the supreme court have for some time past been performed by a less number, an adequate compensation for this extraordinary service appears to be just and reasonable, and can be made without exceeding the usual expense of the department. It has been suggested that the imposition of certain fees upon lucrative commissions and valuable grants would defray the expenses of the secretary's office; and as the laws of the United States have imposed the duty of reviews on the brigade inspectors, an abridgment of the expense and labor, and consequently a reduction of the compensation of the adjutant-general, may be found expedient.

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[5] The joint committee which had under consideration this part of the Governor's speech made a report expressing the opinion that the salt springs would not become a source of substantial revenue under State management. That "the neighboring climate is so unhealthy as to render it impossible to work them during three or four months of the year; that this evil may, in a measure, be remedied by ditching and draining the adjacent swamps, and the outlet of the lake near which they are situated, and that other improvements are necessary in order to carry the works into complete operation. All which, the committee believe, will be more economically and speedily effected under the care of individuals, than of the State." The committee recommended leasing the salt springs for a term of years, buildings erected by the lessee to be paid for by the State at the expiration of the term. A bill for this purpose was ordered brought in, but none was passed.

The importance of a well regulated militia as most congenial with the spirit of our free government, as in a great measure superseding the necessity of standing armies, and as augmenting the power and respectability of the nation, is so obvious and so great, that too much attention can hardly be devoted to this inestimable object. A general revision of the system appears to me to be essential. Contrarieties exist between the laws of the United States and this state, which impede and embarrass the proceedings under them. A sufficient discretion is not left in the formation and organization of new corps, or in the reduction of those already established, according to circumstances, and the law requires the aid of additional sanctions to render it efficient. It may be proper here to mention that the state has expended large sums in the purchase of cannon, small arms and military stores, and that no adequate provision is made for their due preservation, and unless this is speedily and effectually done, those expenditures will be in a great measure rendered useless, as will particularly appear by the report of the commissary of military stores, which will be delivered to you. Our constitution contemplates the establishment of well supplied magazines and arsenals, in every county of the state.[a] If this cannot be literally complied with, it is surely our duty to endeavor to conform to the spirit of the provision.[6]

I have directed the secretary to lay before you the proceedings of the convention, and the census taken under the authority of this state. New apportionments of the representation in the senate and assembly will be required under them, as well as an alteration in the districts for electing representatives to the congress of the United States, in consequence of our increased representation in that body.

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[a] Const. 1777, § 40.

[6] Additional military arrangements were prescribed by chap. 120, passed April 5.

When I observe that one of the great districts and some of the counties are only partially represented, owing to vacancies occasioned by death or otherwise, and that no provision exists for supplying the deficiencies, I cannot but regret that this subject has not hitherto received the attention of the legislature.[7]

The advantages resulting to the agricultural and commercial interests of the state, from facilitating the means of communication between different parts of the country, have been heretofore acknowledged in the liberal grants of the legislature. Large sums have been granted for making canals,[8] improving our navigable waters, erecting bridges and opening roads; and the attention of the government has recently been particularly drawn to the incorporation of turnpike companies. The superintending and fostering care of the legislature is still necessary to extend the public utility of pursuits of this nature, but if future incorporations of turnpike companies should be deemed expedient, it may be worthy of consideration, whether former ones have been sufficiently guarded, in prescribing the original laying out of the roads in a manner most subservient to the public convenience, and whether a summary mode ought not to be prescribed to exact a compliance from those companies with the intentions of government.[9]

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[7] The Constitutional Convention of 1801 reorganized and reconstructed the Legislature. An apportionment act, chap. 81, was passed March 31, and chap. 72, passed March 30, amended the act relative to the election of representatives in Congress. The apportionment act provided for filling vacancies.

[8] By chap. 97, passed April 3, further aid was granted to the Western Lock Navigation Company.

[9] The Assembly adopted the recommendations of a committee that all turnpike acts include a provision that the road should be laid out by commissioners appointed by the Governor and Council of Appointment, and this provision was included in all such acts passed at this session. Chaps. 66, 69, 95, 96, 98, 102, 108, 111, and 113 incorporated turnpike companies or amended existing charters.

The system for the encouragement of common schools having been discontinued, and the advantages to morals, religion, liberty and good government arising from the general diffusion of knowledge being universally admitted, permit me to recommend this subject to your deliberate attention. The failure of one experiment for the attainment of an important object, ought not to discourage other attempts.

Such other matters as may be deemed worthy of your notice, will be communicated in the course of the session, as usual, by message.

GENTLEMEN.—When we reflect on the rapid progress of our population, on the extension of our settlements, on the flourishing condition of our agriculture and commerce, on the progress of religion, literature and useful knowledge, and on the general prosperity of our fellow citizens, we cannot but acknowledge with humble gratitude the benign dispensation of Divine Providence in granting us a free representative government, which may be considered as the principal source of the distinguished blessings we enjoy. Let it then be our care, as it is our duty, to cherish the principles of a government which has produced so much good. Let us guard against every encroachment or deviation, and unite in every effort to render it perpetual.

GEO. CLINTON.

Albany, January 26, 1802.

SPECIAL MESSAGES.

January 27. To the Senate:

"GENTLEMEN.—By a letter from the Secretary of War, dated the 24th of October, a copy of which will be herewith delivered, you will be informed, that the general government has it in contemplation to establish a military post at the Black Rock, on the eastern extremity of Lake Erie, if this state will concur in the extinguishment of the In-

dian right, and make the customary cession of a sufficient quantity of the land. As this measure is calculated for the security of our frontiers, it has a strong claim to your attention and patronage.[10]

It may also be proper to inform the Legislature, that the Treaty directed to be held with the St. Regis Indians by the act of the last session, has not been accomplished, owing to some defect in the provisions of that law; but understanding, that the Indians were requested by my predecessor, to attend in this city at the present meeting of the Legislature, I have applied to the President to appoint an Agent on the part of the United States, to be present at the holding of such Treaty.[11]

GEO. CLINTON."

Albany, January 27, 1802.

January 27. To the Assembly: Transmitting the annual report of the Inspector General of Beef and Pork.[12]

January 28. To the Senate:

"GENTLEMEN.—At the request of his Excellency the Governor of the State of North Carolina, I now submit to your consideration, resolutions of the Legislature of that State, referred to in his letter to me of the 26th of December, a copy of which will be herewith delivered to you.[13]

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[10] Chap. 47, passed March 19, authorized the Governor or his agent or agents to be appointed by him, to hold a treaty with the Seneca Indians for the purpose of extinguishing their title to lands at the east end of Lake Erie including Black Rock and so much adjoining land as may be sufficient to establish a military post, and upon the conclusion of such treaty the Govenor, on behalf of the State, was authorized to convey to the United States so much of the land acquired as might be needed for a military post.

[11] The St. Regis act was amended by chap. 33, passed March 8.

[12] The act relative to the inspection of beef and pork was amended by chap. 117, passed April 5.

[13] The Legislature, acting on the North Carolina resolutions, adopted a concurrent resolution that the presidential electors be chosen by districts, and that in voting for President and Vice-President the electors declare which is voted for as President and which as Vice-President.

I transmit also with this message a copy of a letter from his Excellency Caleb Strong, Governor of the Commonwealth of Massachusetts, dated the 5th of May, 1801, proposing an interchange of the laws and maps of the respective States. As this letter was accompanied with only one set of the laws and maps, I shall have them deposited in the Secretary's office, unless a different disposition is directed by the Legislature.

GEO. CLINTON."

Albany, 28th January, 1802.

January 29. To the Senate:

"GENTLEMEN.—As a speech made in behalf of the Seneca, Onondaga, Cayuga, and Delaware Nations of Indians, to Israel Chapin, Agent for Indian Affairs, and delivered to me by him, contains information that may be useful to the Legislature on a subject submitted to their consideration, I herewith transmit an extract of it: and also a copy of an instrument, subscribed and delivered by Philip Schuyler, John Cantine, D. Brooks and John Richardson, Esquires, to the Cayuga Indians, promising to recommend provision to be made by the Legislature, relative to certain claims of theirs.

GEO. CLINTON."

Albany, 29th Jan. 1802.

January 30. Thanking the Senate for its address.

January 30. To the Assembly:

"GENTLEMEN.—At a court of oyer and terminer and general gaol delivery, held in and for the county of Oneida, in the month of August last, George Peters (one of the Brothertown Indians) was convicted of the murder of his wife, and sentenced to suffer death on Friday the 28th of that month. From the report of the presiding judge, there

is reason to infer that the conviction was on full evidence of guilt, nor had any circumstances occurred to create a doubt on the subject. Yet considering the ignorance of that unfortunate people, and the nature of our political relation with them, I was induced to respite the execution of the sentence until the second Friday of next month, in order to afford an opportunity for legislative interposition, if it should be deemed advisable.[14]

GEO. CLINTON."

Albany, January 30, 1802.

February 1. To the Assembly:

"GENTLEMEN.— You will receive with this message a copy of a letter, addressed to me by the Comptroller, dated the 19th of August, and one from the Deputy Commissary of military stores, dated the 14th of last month.

In consequence of the representation contained in the former, I conceived it expedient to advise the Comptroller to have a room prepared in the building, in which the Secretary's and other public offices are kept, for his accommodation, and to direct such temporary repairs to be made as well to that building as to the arsenal, as might be necessary to preserve them from further injury during the recess of the Legislature; an account of the expenditures for this service will be laid before you, and I trust it will be found that a due regard has been paid to economy.

On this occasion, permit me to suggest the propriety of legislative provision for keeping in repair these and the other public buildings belonging to the State, to prevent the necessity of interferences in cases of this kind, not sanctioned by law.

It may be also proper to mention, that I directed the furniture belonging to the State, and which was let with

[14] The Legislature declined to pardon Peters, and by chap. 1, passed February 8, fixed a day for his execution.

the government house in the first instance, to be removed to this place; some part of it has been destroyed, some part much injured, and the whole would soon have been rendered useless, if left in the situation it was in; some small expense has occurred in repairs, and in transporting it hither, an account of which will be presented to you. A list of the furniture is deposited in the Comptroller's office.[15]

GEO. CLINTON."

Albany, February 1st, 1802.

February 2. Thanking the Assembly for its address, the Governor said:

"GENTLEMEN.—I receive with great sensibility your kind and obliging expressions on my election. To be elevated to the Chief Magistracy of a great and respectable state, by the free suffrages of my fellow citizens, is indeed a high mark of distinction, and this testimony of public approbation is the more flattering, if it be as you are pleased to consider it — a reward for past services.

In a government founded on the will, and eminently enjoying the confidence of the people, in which the laws are mild and liberal, and obedience prompt and universal; the administration cannot fail of being propitious, if conducted, as it ought to be, with a view to the public good. As it has ever been my endeavor to make this my only object, so it shall continue to be my constant study to evince the grateful sense I entertain of this new mark of confidence, by promoting with unabated zeal and ardor, the prosperity and happiness of our constituents. And I feel assured, Gentlemen, that by the measures you will

[15] Chap. 119, passed April 5, authorized repairs on the public building according to the Governor's suggestion, and the preparation of offices for the Treasurer and the Surveyor-General. The same act made provision for expenses incident to the removal of furniture from the Government House in New York, and for the repair of such furniture.

adopt to advance the true interest of the State, the public trust reposed in your wisdom and patriotism will be fully justified.

GEO. CLINTON."

Albany, February 2d, 1802.

February 4. To the Assembly:

"GENTLEMEN.—My confidence in the patriotism and talents of John Armstrong, Esquire, one of the Senators from this State, in the Congress of the United States, renders it a painful task to me to transmit his resignation to the Legislature.[16]

GEO. CLINTON."

Albany, February 4th, 1802.

February 9. To the Assembly: Transmitting the resignation of Rev. Benjamin Moore as a regent of the University.[17]

February 16. To the Senate:

"GENTLEMEN.—There are now in this city upwards of twenty Indians, most of them of the Oneida nation, on business, the purport of which is contained in a speech delivered to me yesterday evening, by one of their chiefs, a copy of which accompanies this message. They expressed a desire of having their business dispatched as early as possible, that they may return home; and considering the expense attending their stay, economy requires that they should not be long detained. As the Act to impower the Governor to provide for the entertainment of Indians visiting the seat of government on business, expired in

[16] De Witt Clinton was appointed to fill the vacancy caused by the resignation of Senator Armstrong.

[17] Henry Rutgers was appointed Regent to fill the vacancy caused by the resignation of Benjamin Moore.

March last, you will perceive the necessity of some immediate provision for this purpose.

GEO. CLINTON."

Albany, February 16th, 1802.

(See special message of March 10.)

February 18. To the Assembly: Transmitting reports from the Inspector Generals of Beef and Pork, and staves and heading,[18] and also a petition from a number of Oneida Indians.

March 2. To the Assembly:

"GENTLEMEN.—I herewith transmit a report of Simeon De Witt and John Tayler, Esquires, agents appointed to confer with the Onondaga Chiefs in this city, together with a copy of my letter to Nathan Williams, Esquire, District Attorney, on the subject of their complaints. How far this, or any other measure that can be adopted under the existing laws, will be found competent to give them redress, and ensure a faithful observance of the stipulations in our treaties with them, is a matter well worthy the consideration of the Legislature.[19]

Relying on the assurances I have given to them of protection, they are now on their way home.

GEO. CLINTON."

Albany, March 2d, 1802.

March 6. To the Senate: Transmitting a petition from the Regents of the University with an accompanying map and proposed bill.

March 10. The Legislature adopted a concurrent resolution authorizing the Governor, Surveyor General, and

[18] The act relative to the inspection of staves and heading was amended by chap. 90, passed April 1.

[19] Chap. 47, passed March 19, authorized the Governor to treat with the Cayuga and Onondaga Indians for the purchase of such of their lands as they might wish to sell.

such other person as the Governor might appoint, to treat with the Oneida Indians for the purchase of such part of their lands as they might wish to sell, and which treaty when ratified by the Agent on the part of the United States, was to be binding and conclusive on this State.

The following message, sent to the Senate on the 10th of March shows the action that had been taken under this resolution:

"GENTLEMEN.—In compliance with the concurrent resolutions of the Senate and Assembly, of the 23d and 24th of February last, I have, together with the Surveyor General and Ezra L'Hommedieu, Esquire, treated with the Oneida Indians, and entered into a provisional agreement with them for the purchase of such parts of the lands in their reservation as they were inclined to sell; and I now transmit to you a copy of the said agreement, in order that provision may be made for carrying the stipulations, contained in it, on the part of this State, into effect, and for defraying the incidental expenses which have occurred in this transaction, an account of which will also be herewith delivered to you.

GEO. CLINTON."

Albany, March 10th, 1802.

March 10. To the Assembly:

"GENTLEMEN.—Finding it impracticable to meet the Commissioners of the Land Office, as often as the business committed to them, and the convenience of applicants require, and at the same time pay the necessary attention to the more important duties assigned to the executive by the constitution, I submit to the Legislature the expediency of amending the law establishing that board, so as to give validity to their acts, without the presence of the person administering the government.

GEO. CLINTON."

Albany, March 9, 1802.

March 16. To the Senate:

"GENTLEMEN.— I now submit to the Legislature, the report of the Agents appointed to treat with the St. Regis Indians, for the extinguishment of the mile square and the meadows on Grass River. I also present to you a petition from those Indians, praying, among other things, for legislative provision, to enable them to lease a part of their lands, to establish a ferry across the St. Regis River, and to apply the income thereof to the support of a school for the instruction of their children. It may be proper to observe that as the petitioners have uniformly evinced a warm attachment to the State, and have made uncommon advances towards civilization, they have a claim to the attention of the Legislature, arising as well from principles of policy as benevolence. They discover an anxiety to return home as soon as possible, but at the same time are unwilling to leave this city, until the result of their application to the Legislature is known.[20]

GEO. CLINTON."

Albany, March 16th, 1802.

March 29. To the Assembly: Transmitting the annual report of the Regents of the University.

March 31. To the Assembly:

"GENTLEMEN.— I now transmit to the Legislature a letter addressed to me, which I this day received from Isaac Ledyard, Health Officer, James Tillary, Resident Physician, and Edward Miller, Health Commissioners, sug-

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[20] Chap. 50, passed March 26, relating to the St. Regis Indians, included provisions for a lease of the ferry and adjoining lands, applying the rents for maintaining a school, for town meetings and the election of trustees thereat, procuring a bell for their church, and presenting to the Indians two suits of silk colors, one with the arms of the United States, and the other with the arms of this State.

The appropriation act, chap. 119, provided for extinguishing the claim of these Indians to the mile square and meadows on Grass river.

gesting certain amendments in their opinion necessary to be made in the laws relative to their department. I regret that it was not in my power to make this communication to you, of so much importance, at an earlier period of the session.

GEO. CLINTON."

Albany, March 31, 1802.

April 3. To the Senate:

"GENTLEMEN.—Observing that my message of the 9th of last month, upon the subject of the Land Office, has not produced the desired effect, and that additional important duties are assigned to that board, I conceive it proper again to address you on the subject, and to assure you that it will be impossible for me to attend as a member of that board, consistent with a faithful discharge of my constitutional duties; and which claim an attention, in preference to those additional ones, the Legislature may think proper to annex to the office of chief magistrate, the propriety and constitutionality of which are always questionable, when (as in the present case) they do not exclusively appertain to the executive department, and executive responsibility is destroyed by the control of associates.

GEO. CLINTON."

Albany, April 3d, 1802.

April 3. To the Assembly:

Objections by the Council of Revision to a bill "declaring certain waters in the counties of Steuben and Chenango to be public highways, and repealing part of the act entitled 'an act to regulate highways.'" [21]

"Because the said bill declares that certain waters and streams within the county of Steuben shall become public

[21] This bill, declaring certain waters in Steuben and Chenango counties public highways, was passed over the veto, and became a law, chap. 122. on the 5th of April.

highways, when the lands under the said waters and streams have already been ceded by this State to the Commonwealth of Massachusetts, without any reservation, and become the private property of individuals; and the said bill does not provide any compensation or equivalent to the persons whose rights would be thereby affected; and because it is inconsistent with the spirit of the Constitution, and against the public good, that any citizen should be deprived of his property for public purposes, without a just equivalent or compensation therefor."[b]

April 5. The Legislature adjourned without day.

1803. JANUARY. LEGISLATURE, TWENTY-SIXTH SESSION.

GEORGE CLINTON, Governor.

The Legislature met on the 25th of January, when the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—I have the satisfaction to inform you that nothing has occurred in the recess of the legislature to disturb the public tranquillity or to impede the growing prosperity of the state. For a continuation of these inestimable blessings our unfeigned gratitude is due to the Supreme Disposer of all events. You must, however, have heard with regret of the late unwarrantable conduct of the Spanish Intendant at New Orleans, calculated to deprive the people of the United States of the free navigation of the Mississippi; but notwithstanding the sensibility so generally and justly excited on this occasion, there is every reason to believe that the wise and temperate measures adopted by the

[b] Const. 1777, § 13; 1894, Art. 1, § 6; U. S. Const. 5th Am.

President will remove all cause of complaint. Should this not be the case and a more vigorous course become proper and necessary, I feel confident it will be pursued, and that this state, which so eminently exerted itself in the establishment of American Independence, will display equal firmness and patriotism in vindicating our national rights from whatever quarter they may be assailed.

Our fellow citizens, attached to our happy constitution from a conviction that it is wisely calculated, under Divine Providence, to ensure all the essential benefits of civil society, without any unnecessary abridgment of their natural rights, generally manifest a disposition to pay a due obedience to the laws, which they justly consider as the expression of their own will, and to give to government that genuine energy and support which are only to be derived from their confidence and affection. It is also with pleasure I mention that the duties assigned to the different departments as far as my observation extends continue to be performed with wisdom and fidelity.

With respect to the various matters committed to my more immediate direction, I flatter myself you will find them executed in a manner that will meet your approbation. Treaties have been held with the Oneida and Seneca nations of Indians, and the objects contemplated by the laws authorizing those negotiations, accomplished. Copies of the treaties will be laid before you, with an estimate of the sums which remain to be provided for, to comply with the stipulations contained in them.[1] It may be proper to remark that as no provision was made for the payment of the sums mentioned in the agreement entered into with the Oneidas, under concurrent resolutions of the Senate and Assembly of last session, nor for defraying the expenses of the treaty directed to be held with that nation, it became

[1] The appropriation act, chap. 103, passed April 6, made provision for discharging the obligations incurred by the State in the treaties with the Seneca and Oneida Indians.

necessary to supply these deficiencies by private credit. I avail myself of this first opportunity of fulfilling my engagement to the Seneca Indians, by recommending that legislative provision be made for securing to them certain privileges specified in the treaty with that nation. I considered their claims reasonable, and would have confirmed them, had not doubts existed respecting my authority.[2]

The annual report of the commissary of military stores, with the papers accompanying it, will communicate all useful information relative to that department, and disclose to you how far the different services enjoined on him by the act of last session, designating his duties have been performed. Notwithstanding I have reason to believe this business has been conducted with a strict regard to economy, yet it is probable the expenses incurred may exceed the sum at which they were estimated, owing to the extensive repairs which the arsenals required, and to the ruinous condition in which the small arms and accoutrements were found; as it could not have been conjectured that whilst large sums were expending in defensive preparations, articles of the first utility would have been so much neglected. This effort to put our magazine of military stores in a state of repair is an useful one, but as it will appear from the returns that the supplies fall far short of those enjoined by the constitution,[a] it would be injustice to the wisdom of the legislature to doubt that such farther appropriations will be made as the state of our treasury may warrant, for a more perfect compliance with a constitutional injunction dictated by a regard for the public safety. The danger of placing a dependence on these supplies from abroad, and the difficulty of procuring them when most wanted, point out the expediency of embracing the present

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2 Chap. 106, passed April 6, relative to the sale of unappropriated lands, contained a provision ratifying the stipulations included in the treaties made with the Senecas and Oneidas.

a Const. 1777, § 40.

favorable opportunity which peace affords, for replenishing our magazines: in doing this, however, a preference ought to be given to articles which the ingenuity and industry of our own citizens can furnish, as thereby an additional object will be attained; encouragement will be given to American artizans.[3]

With the returns of the reviews and inspections of the last year, I shall also cause to be laid before you those of the preceding one; by a comparison of them you will have the satisfaction to discover an increasing attention to duty, honorable to the militia, and at the same time evincive of the beneficial effects produced by the amendments made at the last session to the militia law. It is submitted to your judgment to devise such farther improvements in the system as shall be best calculated to promote discipline and encourage military ardor.[4]

Although it was to have been expected crimes would have multiplied with the increase of our population, it is with peculiar pleasure I observe that from the documents in my possession it may be inferred with a degree of certainty that for the last three years their number has been gradually diminishing. This circumstance, whilst it is highly gratifying to philanthropy, and reputable to the community, demonstrates the wisdom of the alterations made in our criminal code by the rejection of sanguinary punishments and the substitution of a system more congenial with the mild spirit of our free government.

This, with other wise improvements which have from time to time been made in our laws, and the recent judicious revision and amendment of them, have given to our jurisprudence such a degree of perfection as to induce a belief that any material alterations are at present unneces-

[3] The act, chap. 86, passed April 4, which among other things authorized the Surveyor-General to lease certain lands, placed $12,500 at the disposal of the Governor to be expended by him in the purchase or manufacture of arms and military stores.

[4] A supplemental militia law, chap. 87, was passed April 5.

sary. Besides the obvious advantages attending the stability of laws, it is essential to their due observance, that they should be generally known and accurately understood; but this is impracticable whilst they are subject to frequent changes, since time is required to ascertain by judicial decisions the legal import of sections admitting of different constructions, and such are too frequently to be found even in amendatory statutes. Should you, gentlemen, concur in this opinion, a greater portion of your time than usual may be devoted to other objects.

The improvement of our fiscal concerns will naturally present itself to you as of superior moment, and the details contained in the comptroller's annual report will assist in your deliberations on this important subject by suggesting measures for rendering the funds of the state more productive of revenue. The salutary effects resulting from the economical system and judicious arrangements of the general government afford an instructive lesson; and if we pursue an example of such high authority and so worthy of imitation, there is reason to believe that the finances of the state may be placed in a condition competent to all the exigencies of government without the necessity of recurring to taxation.[5]

The tract of land belonging to the state adjoining the Niagara River, including that ceded by the recent treaty with the Seneca nation of Indians, comprehends the carrying place and line of communication between the great western lakes. This and other interesting considerations arising from its frontier situation, render it highly important that measures be taken for its speedy and regular settlement.[6] The interest of the state also requires more

[5] The appropriation act, chap. 103, contained a clause authorizing the Comptroller to invest certain State funds.

[6] The act, chap. 106, relative to the sale of unappropriated lands, authorized the Commissioners of the Land Office to lease ferry privileges near Black Rock, and at Queenstown, and contained other restrictions concerning the use and disposition of lands along the Niagara river.

effectual measures than have hitherto been adopted to prevent wastes and intrusions on the public lands. It is to be feared that the indulgent conduct of government has only tended to increase these pernicious practices. Most of the offenders are strangers, ignorant of our laws, and it is time they were taught that transgressions are not to be rewarded with favors. Wholesome settlers will not risk their labor in improving lands held by so unjustifiable and precarious a tenure, and sound policy as well as justice forbids our encouraging those of a different description.

There is perhaps no object connected with the internal commerce of the state of greater consequence to its prosperity than the navigation of Hudson's River, and under this impression the legislature have at different times granted considerable sums which have been applied to its improvement and extension. It is obvious, however, that the advantages to be derived from these expenditures can be but of comparative small value, unless the public aid shall be extended to the removal of the obstructions below this city, which greatly impede the passage of the river, and are found to be annually increasing. If it should be deemed expedient to patronize this interesting undertaking, you will perceive the propriety of directing preparatory measures for ascertaining the best manner of accomplishing it, and of committing its execution to agents of your own appointment, as attempts on an injudicious plan might, without effecting the object, be productive of injurious consequences.[7]

Some defects which had been discovered in the laws establishing turnpike road companies were suggested to the legislature at the opening of the last session; but although the evils apprehended from these defects were guarded against in the incorporating acts passed sub-

[7] Chap. 68, passed April 2, contained various provisions for the improvement of the Hudson River.

sequent to that period, yet no remedies were extended to the imperfections of the then existing laws; and, as in these, no mode is prescribed to exact a compliance from the companies with the intentions of government, the trouble, expense and hazard of vindicating public rights devolve on individuals. It is submitted, whether it would not be expedient to confer the power of enforcing these laws on some of the established officers at the public expense, and at the same time to prescribe the manner in which such power shall be executed.[8] The difficulties which occur in devising amendments to acts of this kind, without invading corporate rights, ought to serve as an admonition to great care and circumspection in framing future ones. How far it will be prudent to increase the number of these incorporations before the advantages to be derived from them by the public shall be more fully ascertained by a course of fair experiment, is a question worthy of your serious consideration.

The establishment of common schools has at different times engaged the attention of the legislature, but although its importance is generally acknowledged, a diversity of sentiment respecting the best means has hitherto prevented the accomplishment of the object. The diffusion of knowledge is so essential to the promotion of virtue and the preservation of liberty, as to render arguments unnecessary to excite you to a perseverance in this laudable pursuit. Permit me only to observe, that education, by correcting the morals and improving the manners, tends to prevent those evils in society which are beyond the sphere of legislation.[9]

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[8] Chap. 81, passed at the next session, April 9, 1804, provided for the appointment of commissioners for the inspection of turnpike roads, and directed the Attorney-General to prosecute turnpike companies for violations of law.

[9] No common school law was passed, but by the appropriation act, chap. 103, the Comptroller was authorized to invest for not more than two years sums received for the use of common schools, and also the proceeds of lotteries received under the act of 1801 for the promotion of literature.

GENTLEMEN.—I shall occasionally communicate by message such other matters as may appear to deserve your notice, without detaining you any longer at this time, than to assure you of my best endeavors to render your session agreeable; and that I shall always consider a cheerful co-operation with the legislature in every measure calculated to promote the honor of the state and the happiness of our constituents among the first of my duties.

GEO. CLINTON.

Albany, January 25, 1803.

SPECIAL MESSAGES.

January 31. Thanking the Senate for its address.

January 31. To the Assembly: Transmitting the annual report of the Inspector General of beef and pork for the city and county of New York.[10]

February 4. Thanking the Assembly for its address.

February 11. To the Assembly:

"GENTLEMEN.—You will receive with this message the returns of the militia, mentioned in my communication to the Legislature at the opening of the session:[b] and also a report from the Commissioners of the Health Office, which will require the attention of the Legislature.[11]

GEO. CLINTON."

Albany, February 11th, 1803.

February 23. To the Assembly: Transmitting the report of the Governors of the New York Hospital, and also the annual report of the inspector general of staves and heading.

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[10] Chap. 101, passed April 6, 1803, prescribed regulations concerning curing, packing, and inspection of beef and pork for exportation.

[b] See note 4.

[11] An act, chap. 8, relative to infectious diseases, was passed at the next session, February 28, 1804.

February 26. To the Assembly:

"GENTLEMEN.—It will appear from the letters which accompany this message, that it is contemplated to erect a light-house on the island, called Little Gull, for the security of vessels navigating the Sound, between Long Island and the Main, and to purchase for the accommodation of the establishment the adjacent island, called Great Gull, if the Legislature shall think proper to cede the jurisdiction of those Islands, conformably to the provision of the Act of Congress, passed the 6th of April, 1802.

I have only to observe, that it is believed such an establishment would be attended with salutary consequence, and be advantageous to the commerce of the State.[12]

GEO. CLINTON."

Albany, February 26th, 1803.

The message was accompanied by letters from federal authorities, requesting the State to cede these islands to the United States for light house purposes.

February 28. To the Legislature:

"GENTLEMEN.—With this message will be delivered to you the Journals of the Senate and House of Representatives of the United States, and also the laws of the States of Kentucky and South Carolina, with the letters accompanying them. Besides these, I have received, for the use of the Executive, one copy of the laws passed at the last session of the several states of Connecticut, New Jersey, Virginia and North Carolina; and it will be recollected, that we were presented last year with a map and complete set of the laws of the Commonwealth of Massachusetts. I therefore submit to you the propriety of authorizing the reciprocation of these useful communications. The two

[12] Chap. 54, passed March 26, 1803, ceded Great Gull Island and Little Gull Island to the United States for lighthouse purposes.

boxes, containing the laws of the United States, mentioned in one of the letters, have also been received, and deposited in the Secretary's office, until provision shall be made by the Legislature for the distribution of them.[13]

GEO. CLINTON."

Albany, February 28th, 1803.

March 5. To the Assembly:

"GENTLEMEN.—I now lay before the Legislature a report made by the Honorable Mr. Justice Livingston, who presided at the Court of Oyer and Terminer, lately held in the county of Ontario, of the trial and conviction of George, a warrior of the Seneca nation of Indians, for the murder of John Hewitt, together with the Judge's letter to me on the subject, and the memorial of the Grand Jurors of that county in favor of the offender. I have only to observe, that besides the extenuating circumstances which attended the commission of the crime, and which are particularly detailed, you will perceive, from other communications accompanying this message, that there are considerations of a political nature for extending the mercy of government to the culprit.[14]

GEO. CLINTON."

Albany, March 5, 1803.

The journal does not contain the letters mentioned by the Governor.

March 25. To the Senate:

"GENTLEMEN.— I herewith transmit to you a report of a committee of the House of Representatives of the Con-

[13] The Legislature adopted concurrent resolutions providing for the distribution of the acts of Congress, and also requesting the Governor to furnish copies of the map of the State, and of the revised laws to the executives of such States as had not already received them.

[14] George, otherwise called "Stiff Armed George," a Seneca Indian, who had been convicted of murder, was pardoned by chap. 31, passed March 12.

gress of the United States, at their last session, 'upon so much of the President's message, of the 15th of December last, as relates to the militia institution of the United States'—together with a copy of a letter from the President, urging the necessity of vigorous exertions on the part of the State governments, to carry into effect the militia system adopted by the national legislature.

The importance of these documents will be readily perceived. And permit me to call your attention to measures for arming the militia, for prescribing the duties of the officers, for ascertaining relative rank, for exacting the necessary returns with promptness, for more readily discovering delinquencies and misconduct, and for authorizing such alterations in the existing organization of the militia, as to render it more conformable to the militia system established by Congress. [See note 4.]

GEO. CLINTON."

Albany, March 25, 1803.

March 26. To the Assembly:

Objections by the Council of Revision to a bill "to amend an act entitled 'An act concerning the recovery of debts and demands to the value of ten pounds, in the city of New York,' passed the 16th of February, 1797."

"Because, although the first section of the said bill purports to authorize the appointment of five additional justices, and to empower them individually to hold a court in their respective wards; to issue process; to hear, try and determine all actions which the Justices mentioned in the thereby intended to be amended act, might or could do; to issue execution, and to hold and exercise all the power and authority which said Justices, or any two of them, are by the said act authorized to exercise, the bill is entirely unprovisional, as to the mode in which some of the essential powers of a court are to be exercised; for the present

Justices are directed to grant process under a seal to be devised by them, and through the agency of a clerk, to be appointed by them, whose duty it is 'to docket or register all summonses, warrants and executions,' and to make 'proper entries of all acts, orders, dismission decrees, judgments, adjournments and proceedings of the said court, and the substance of the plaintiff's charge or demand, and the defendant's plea; to make endorsements on executions, receive all fees,' and pay them to the Justices; and which registers are, by the eighteenth section of the said act, made legal evidence of the acts and proceedings of the said court. Hence, if the clerk of the present court is intended also to be the clerk of the additional Justices, it would impose upon him the impracticable duty of attending six different courts, sitting at the same time, and at different places. But if a right could be deduced by implication, as existing in each of the said Justices, to devise a seal and appoint a clerk for his peculiar court, it would be totally inconsistent with other parts of the bill, as the fees for all the services to be performed by the clerk, under the existing law, so far forth as respects the courts of the additional Justices, are abolished, and of consequence no reasonable inducement exists to their performance.

Because — although justices generally exercise concurrent jurisdiction, co-extensive with the counties for which they are appointed, such power vested in the additional Justices might lead to vex and oppress the inhabitants of the city of New York, living in the compact parts thereof, as the plaintiffs must of necessity exercise the right of electing the court, and the defendants may thus be compelled to pass several of the other tribunals at their own doors, and to attend at places inconvenient and remote, with their witnesses; an inconvenience which will be occasionally felt by all, but in a greater degree by the inhabitants in the southern parts of the said city.

Because — by the said bill it is intended to repeal the

seventeenth section of the act first above mentioned, whereby the Justices of the present court in the said city would be deprived of a great part of the compensation now allowed them for their services; and also, that by the said bill, new justices are directed to be appointed in the fourth, fifth, seventh, eighth and ninth wards of the said city, invested with equal and concurrent jurisdiction, throughout the said city, with the present Justices' court, in all the cases mentioned in the said act. And it is provided by the said bill, that each of the said Justices in the said wards shall be entitled to receive fees equal in amount to those which the two Justices required to hold the present court would be entitled to receive for the same services, whereby the compensation of the several Justices of the present court would be still farther diminished and reduced below the compensation allowed to the several Justices to be appointed in the said wards, when at the same time the Justices of the present court are invested with superior powers and unlimited jurisdiction in certain cases in which the Justices in the said wards would have no jurisdiction."

The bill was not passed over the veto.

March 28. To the Assembly: Transmitting the annual report of the Regents of the University, the Governor said: "The increasing usefulness of the seminaries of learning under their care, cannot fail to recommend these institutions to a continuance of your patronage." (See note 9.)

April 6. To the Senate:

Objections by the Council of Revision to a bill "granting and securing to Philo Norton, the sole right and advantage of erecting and employing, for a limited time, machines for carding wool, and spinning flax and hemp within certain counties within this State."

"Because, it purports to vest in Philo Norton, 'the sole and exclusive right and privilege of erecting, using and employing machines for carding and spinning wool, and spinning flax and hemp' in the counties therein mentioned, without a particular reference to the specification of the machinery described in its preamble; thus restraining the exertions of ingenuity and circumscribing the efforts of industry-objects which peculiarly merit public patronage."

The bill was not passed over the veto.

April 6. The Legislature adjourned without day.

1804. JANUARY. LEGISLATURE, TWENTY-SEVENTH SESSION.

GEORGE CLINTON, Governor.

The Legislature met on the 31st of January, when the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—It must be a source of peculiar satisfaction to you, as the representatives of a free people, when assembled to deliberate on their political welfare, to find the state in a prosperous and flourishing condition, and our fellow citizens tranquil and happy under the benign influence of mild and wholesome laws; and if we advert to the situation of our national concerns, it will afford additional gratification to reflect that by the blessing of Heaven on the wise and pacific procedure of a virtuous administration, the calamities of war have been averted, the rights of the union maintained, its commercial privileges extended, and its territories enlarged.[1] It is not, however, my province on this occasion

[1] Louisiana was purchased by the United States from France by a treaty made April 30, 1803. The price paid was, in round numbers, $15,000,000. Robert R. Livingston and James Monroe represented the United States in negotiating the treaty.

to expatiate on the immense value and importance of the advantages thus honorably acquired.

But notwithstanding this pleasing aspect of our public affairs we have had reason to lament a partial interruption of prosperity, and the loss of many valuable members of the community, by the recurrence of malignant fever in one of our principal commercial cities. The evils attending this dreadful calamity, both as they affect the lives of the citizens, and the commerce of the state, are so distressing and of such magnitude as to demand the serious and unremitted attention of the legislature. Whatever diversity of opinion may be entertained by professional men, with respect to the origin and nature of that disease, experience and observation seem to evince, that in order to prevent its introduction and spreading, regard must be had, not only to the vessels visiting our ports, but also to the local condition of our cities, for, as it is a fact too well ascertained to admit of a doubt, that crowded and filthy vessels, whether they derive infection from foreign countries or generate it on their voyages, are capable of communicating it to certain places predisposed for its reception: so it is equally certain that situations in the immediate vicinity of those places, although exposed to that infection, are exempt from its influence; and hence it would appear evident that there must exist some latent cause in the present condition of those cities which have lately been subject to pestilential fever, peculiarly favorable to its propagation. Under these impressions, it is submitted to your wisdom, whether, besides revising and improving the present precautionary arrangements for preventing its introduction from abroad, some efficient regulations ought not to be prescribed and enforced for purifying the city of New York, and restoring it to its former state of salubrity; for whilst it is our duty humbly to implore the interposition of the Almighty to avert these afflicting dispensations, it is also highly incumbent on us

to be in the diligent use of those subordinate means which his merciful providence may have ordained for our preservation.[2]

During the recess of the legislature, two vacancies have happened in the senate of the United States by the resignations of the senators from this state. One of these took place at an early period of the present session of congress; in that instance, the public service required the exercise of the constitutional power vested in me of making a temporary appointment:[a] in the other, it being of a recent date, my interference was deemed inexpedient. It is now your duty to fill the vacancies, and to this end the necessary documents will be delivered to you.[3]

I have the satisfaction to lay before you a resolution of the congress of the United States, proposing an amendment to the constitution, respecting the election of president and vice-president; and as one of similar nature has been for two years successively recommended by the legislature of this state, I feel confident you will receive this communication with peculiar pleasure, and that so desirable and salutary an improvement will meet with your early sanction.[4]

The money appropriated at the last session to be expended under my direction for procuring arms and military stores, has been applied to that purpose on advantageous terms. The different articles purchased are designated in the annual report of the commissary of military stores with the prices annexed. Notwithstanding this valu-

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[2] A supplemental act, chap. 8, relative to infectious and pestilential diseases, was passed February 28. It prescribed various sanitary and quarantine regulations intended to prevent the introduction of infectious diseases into the city of New York. Another act, chap. 79, passed April 9, contained regulations especially applicable to Albany and Hudson.

[a] U. S. Const. art. 1, § 3, clause 2.

[3] John Smith and John Armstrong were chosen senators to fill the vacancies mentioned by the Governor.

[4] The Twelfth Amendment, relative to the election of President and Vice-President, was ratified by chap. 4, passed February 11.

able addition, and the several useful improvements recently made, you will nevertheless perceive the expediency of such further appropriations as the state of the treasury may without inconvenience admit, for augmenting our supplies particularly of small arms; and for the erection of a magazine in the vicinity of the city of New York, and of two additional arsenals, one in the middle, and the other in the western district. The public will be sufficiently accommodated if these are constructed on a contracted plan, and it is presumed that the moderate sum requisite for this service may be replaced, if it should be deemed expedient, by the sale of a portion of the surplus lands set apart for military purposes.

As you must individually have observed the laudable spirit of the militia in the different parts of the state, manifested by their attention to duty and improvement; and as no material defects have been discovered in the laws relative to them, it is unnecessary for me to make any other remarks than such as will be found in the Adjutant General's return. It may be proper, however, to remind you that an act passed at the last session of congress, prescribed regimental chaplains, and certain staff officers, which are not comprehended in our present militia establishment, and that legislative provision will be necessary to authorize their appointment.

The surveyor general will present you with a detail of the proceedings, under the act directing the survey and sale of the unappropriated lands, from which you will discover the progress made in that business, and be able to determine how far the advantages contemplated by the mode prescribed for conducting these sales have been realized, and whether useful alterations may not be adopted.[5]

The annual report of the comptroller will furnish you with a correct statement of our finances, and with such

[5] Various provisions relating to forfeited and unappropriated lands, were included in chap. 111, passed April 11.

useful observations as experience has dictated for their improvement. It must be gratifying to observe, that besides meeting the liberal contributions which have been made for the promotion of literature, and for establishments of public utility, our revenues have been competent to the support of our civil list, and for all the other public exigencies; and there can be no reason to doubt that by a continued attention to those principles of economy which are most congenial with the spirit of our excellent government, the extinguishment of all the demands against the state, arising from former anticipations, may be speedily accomplished without the aid of taxes.

Notwithstanding the great portion of time and labor which has for a series of years past been devoted to the investigation of the claims of individuals, principally for services during the revolutionary war, they do not appear to have diminished, and the public deliberations continue to be embarrassed with them at every new session. From the nature of these services and the length of time that has elapsed, it is difficult either to substantiate just claims, or to guard against improper ones; and to these causes may be ascribed the occasional admission of some which had been repeatedly rejected at previous sessions: and as the success of one improper application furnishes a precedent for others, it is impossible to form a rational conjecture of what may be their number and extent. It therefore appears essential to the public interest, that means should be devised for effecting the final adjustment of these reiterated claims, within a given period of time, upon certain fixed principles calculated to dispense equal justice, for besides the inefficacy of the present mode, and the heavy burthen it imposes on the legislature, it has frequently happened from the pressure of private business, that the passage of important public bills has been retarded till so near the close of the session as not to leave time for a deliberate and careful revision of them. I might mention other inconveniences resulting from the same cause, but

as these do not come within the cognizance of the executive, I forbear enumerating them.

Although the management of our external relations is committed exclusively to the general government, it is nevertheless the duty of the individual states, by every proper means to facilitate and give effect to the arrangements which may be devised for securing the tranquillity and happiness of the nation. The neutral position taken by the United States, amidst the wars of Europe, has elevated our character, and increased our national prosperity; and as the citizens of this state have an extensive commercial intercourse with the conflicting parties, and the unwarrantable acts of individuals have frequently disturbed the repose of empires, it is peculiarly incumbent on us to cherish a spirit corresponding with our neutral situation, and to inculcate on our constituents the necessity of attending to the wise admonitions of the executive of the union, "to cultivate the friendship of the belligerent nations by every act of justice and innocent kindness."

The detention of our citizens on board of vessels in our own ports by the subjects of other governments, will perhaps require some more energetic remedy to be put in the hands of the magistracy than exists at present; and it may be proper to mention as connected with this subject, that as it is questionable whether the waters in this state, between Long and Staten Islands, and south of the bounds of New York, are included in any county, some appropriate provision will be necessary to obviate the evils arising from this uncertainty of jurisdiction.

Several matters which were under consideration at the last session, and in which some progress was made, remain unfinished; of these, the establishment of common schools, and the improvement of the navigation of Hudson's River in the vicinity of this city,[6] are of the first importance.

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[6] Chap. 67, passed April 6, made provision for improving Hudson's River below Albany.

The competency of our laws for all the important purposes of good government, and the faithful administration of justice under them must necessarily diminish the ordinary objects of legislation; and as I have nothing further of special moment to recommend to your notice, you will commence this session with the pleasing prospect of being relieved from your public labors at an earlier period than usual, and I entreat you to be assured of my best endeavors to facilitate the dispatch of business, and to render your deliberations agreeable.

GENTLEMEN.—If we review the present happy condition of our country, and reflect on the many distinguished blessings we enjoy, as well as on the numerous evils incident to other governments, from which we are exempted, there will be found abundant reason to rejoice that we live in a republic thus highly favored of heaven, and under a social compact from which so many benefits result; and whilst these considerations should animate us with exalted sentiments of patriotism, and with a lively zeal to cherish the fundamental principles of our political institutions, they ought above all to inspire us with becoming gratitude to the great ruler of nations, on whose favor all our happiness depends.

GEO. CLINTON.

Albany, January 31, 1804.

SPECIAL MESSAGES.

February 7. Thanking the Senate for its address.

February 8. To the Senate: Transmitting papers relative to the conviction of William Conklin for murder, and submitting the case to the consideration of the Legislature.[7]

[7] William Conklin was pardoned by chap. 5, passed February 18.

February 10. Thanking the Assembly for its address.

February 11. To the Senate: Transmitting a communication from the Chancellor recommending an amendment to the statute regulating fees so far as it respects the Court of Chancery.[8]

February 22. To the Assembly: Transmitting the report of the Governors of the New York Hospital.

February 23. To the Assembly:

"GENTLEMEN.—From the papers accompanying this message, you will perceive the propriety of so amending the 'Act to provide against infectious and pestilential diseases,' passed 30th March, 1801, as to commit the powers of directing the performance of quarantine, so far as it respects the cities of Albany and Hudson, exclusively to the mayors and recorders of those cities respectively. It may be proper also for me to observe, that as the only compensation of the health physicians of those places, is to be derived from foreign vessels, and as few or none of that description visit those ports during the prevalence of the fever, it appears necessary, that some other provision should be made for remunerating them for their services, and for defraying incidental expenses. [See note 2.]

GEO. CLINTON."

Albany, February 23d, 1804.

February 27. To the Assembly:

"GENTLEMEN.—By a concurrent resolution, passed in the session of 1801, the journals and records of the provincial congress, the committee of public safety, and the convention which formed the constitution of this State, were directed to be deposited in the Secretary's office. It

[8] Chap. 58, passed April 4, regulated the duties and fees of officers of the Court of Chancery.

has been found, that owing to the deranged and decayed condition of those valuable documents, which throw light on the most interesting period of our political history, it will be necessary to transcribe them in proper books, in order to attain the important object in view; and as this can be effected at a small expense, I take the liberty of recommending it to your attention, and if you shall think proper to authorize the measure, I will, with pleasure, direct the execution of it, and see that it is performed with correctness and economy.[9]

Copies of the revised laws and maps of this State have been transmitted, conformably to concurrent resolutions of last session, to the executives of the different States; and I now submit to you the propriety of authorizing similar transmissions to the Executive and both houses of the Congress of the United States.[10]

GEO. CLINTON."

Albany, February 27th, 1804.

March 8. To the Assembly: Transmitting the annual return of the militia.

April 2 and 5. Transmitting to the Senate and Assembly respectively the annual report of the Regents of the University.

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[9] The resolution referred to by the Governor was adopted on the 18th and 19th of March, 1801. It provided that John McKesson of the city of New York, who had in his possession the records described in the message, deposit the same, together with the schedule thereof made by him, in the office of the Secretary of State. The Legislature adopted the Governor's suggestion, and by chap. 115, passed April 11, 1804, directed that the Governor "cause the journals and records of the Provincial Congress, of the committee of public safety, and of the Convention which formed the Constitution of this State," to be transcribed in proper books to be provided for that purpose, and deposited in the office of the Secretary of State.

[10] The Legislature passed a concurrent resolution authorizing the Governor to furnish the executive of the United States with three copies of the revised laws, one copy for the use of the Supreme Court, one for the Attorney-General, and the other for the use of the Secretary of State; and also three maps of this State for the use of the President and both Houses of Congress.

April 4. To the Assembly:

Objections by the Council of Revision to a bill "relative to the election of charter officers in the city of New York." [11]

"Because the bill contains important alterations in the charter of the said city, and it not appearing in the bill by recital, or otherwise, that the same were made upon the application, or with the consent of the parties interested, it is to be intended that they are made without such application or consent: and although it be granted, that such an interference would be justified by some strong public necessity, it is not to be presumed by the Council, that any such necessity exists in the present case, as none are recited in the bill, or appear from the provisions in it; and it has been considered as a settled and salutary principle in our government, that in all cases where the ordinary process of law affords a competent remedy, charters of incorporation, containing grants of personal and municipal privileges, were not to be essentially affected without the consent of the parties concerned."

April 11. The Legislature adjourned to meet the first Tuesday of November, 1804.

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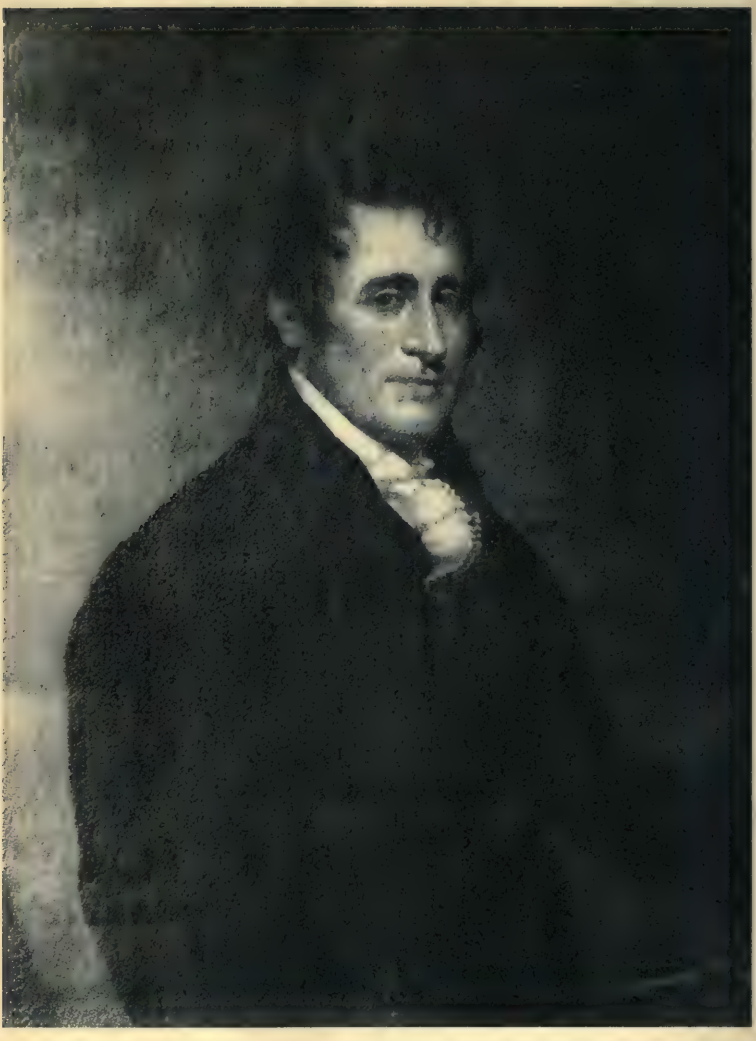
[11] The New York elections bill was passed over the veto, and became a law, chap. 62, on the 5th of April.



Morgan Lewis

MORGAN LEWIS, Governor.

FIRST MEETING.

The Legislature met the 6th of November, on which day Governor Lewis delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.— You were adjourned to this early day to enable you to execute a trust important and interesting as any that can be reposed in the representatives of a free people. The period for which the president and vice-president of the United States were respectively chosen, will expire with the third of March next. It becomes your duty, therefore, in obedience to the constitution of the general government,[a] the act of congress, and that of the legislature of this state relative thereto, to appoint, during the present meeting of the session now about to be opened the legal number of persons duly qualified to elect to them successors to those dignified stations. The selection lies exclusively with you; and in making it, that you will seek for characters of approved integrity, void of prejudice, firmly attached to the principles of our government, and the true interests of our common country, is not to be questioned.[1]

On an examination of the laws above alluded to, it will be found that no provision has been made for the contingency of an elector's absence from the meeting enjoined. This is a defect, the propriety and manner of remedying which I submit to your discretion.[2]

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[a] U. S. Const. art. 2, § 1, clauses 2, 3; see also 12th Am.

[1] The Legislature met in joint session on the 9th of November and appointed nineteen presidential electors.

[2] Chap. 2, passed November 12, 1804, made provision for filling vacancies in the office of presidential elector.

It is with pleasure, gentlemen, I announce to you officially the ratification, by the competent number of states, of the amendment proposed during the last session of congress, to the first section of the second article of the constitution of the United States, so modelling the mode of voting for president and vice-president as effectually to prevent a repetition of the unpleasant scene exhibited at the last election of those officers.

During the recess certain concurrent resolutions of the two houses of the legislature of the commonwealth of Massachusetts, having for their object an alteration of the third clause of the second section of the first article of the constitution of the United States, have been transmitted to me by the executive of that state. A proposition from such high authority merits the most respectful consideration, and (should the clause alluded to [not] be found on examination, incorrect in principle or inconvenient in practice) will, I trust, receive, gentlemen, your cordial support, provided no insurmountable barrier presents itself. How far this is the case at present, and will so continue till the year 1808, you will be enabled to determine by examining this clause in connection with the fourth [clause] of the ninth section of the same article, and the fifth article. The resolutions will be laid before you.[3]

The mission of General Armstrong to the court of France has occasioned a vacancy in our representation in the senate of the United States. Congress is now in session, and as there is reason to believe that interesting dis-

[3] The Massachusetts resolutions contained a preamble reciting the constitutional provision relative to the apportionment of representation in Congress based in part upon the number of slaves, and the inequality produced by this rule as between the slave States and the free States. It was, therefore, proposed to amend the Federal Constitution "so that the representatives be apportioned among the several States according to the numbers of their free inhabitants respectively." The New York Assembly on the 26th of March, 1805, adopted a resolution declaring it inexpedient to concur in the plan of representation proposed by Massachusetts.

cussions will early take place in the national councils, I presume, gentlemen, you will consider the filling such vacancy as meriting a place among the first objects of your attention.[4]

A circumstance much to be regretted has taken place since the last adjournment. Some convicts in the State Prison set fire to the building, and though the utmost exertions were employed to extinguish the flames, they were not successful until one of its wings was nearly consumed. On a consultation of the inspectors with the judges of the supreme court, and the mayor and recorder of the city of New York, it was an unanimous opinion that the public interest demanded the immediate repair of the damage sustained, and as there was no fund from which the sums necessary to defray the expense could be drawn, it was recommended to the inspectors to raise them on their individual credit; this they have done, and the building has been repaired in the most economical and effectual manner, and rendered much securer against future similar disasters than it was in its original state. In addition to the repairs, they have found it necessary to erect, at a small expense, an additional workshop. The amount of disbursements for these objects is fourteen thousand four hundred and forty-two dollars fifty-one cents, for the reimbursement of which they now apply to the justice of the legislature. They further state that the institution is embarrassed by debts contracted by their predecessors in office amounting to $8,600 and 30 cents. Of this sum $4,000 has been paid from their private purses, which they request may be refunded to them, and provision made for the discharge of the balance. An institution so honorable to the justice and humanity of the government, will, it is confi-

[4] Samuel L. Mitchell was appointed to take Mr. Armstrong's place in the Federal Senate.

dently hoped, continue to enjoy the patronage of the legislature.[5]

A bill drawn at the instance of the inspectors proposing additional penalties for the greater security of the prison, and of its internal government, will be presented to the legislature. The infliction of capital punishment in certain cases will be found among its provisions. How far such an alteration in the criminal code may be deemed a departure from the principles on which the institution is founded, and how far it would be consonant to justice and legal policy, will require, gentlemen, your serious and deliberate consideration. If it be an element of the political theory on which government is erected, that it is vested with no rights but such as are derived from the individuals composing the community, and it be admitted that individuals have not the right to dispose of their own lives, it may be reasonably doubted whether the government can justify the infliction of capital punishment in any case not sanctioned by the Divine Mandate. Its policy also may be doubted. The principal object of punishment is the prevention of crime. To him who is deprived of liberty for life, death can have but few terrors, and the efforts of despair are seldom enfeebled by the apprehension of consequences. While on this subject, gentlemen, permit me to suggest to you the propriety of a revision of your system of criminal jurisprudence. Certainly great improvements have been made in it; it is, however, still far from being perfect, and is susceptible of further amendment. It is of the essence of every good system that there be a due apportionment of punishment to crime, estimating the latter by its degree of moral turpitude, and its consequences to society. Commencing with the lower order of felonies, we shall find an unwarrantable difference in the

[5] Chap. 1, passed November 12, 1804, made an appropriation to cover the amounts for extraordinary prison disbursements mentioned in the Governor's speech.

degrees of punishment annexed to grand and petit larcenies, and yet a cent more or less constitutes the essential difference between these offenses. This is not the only objection. The administration of justice being committed to more than thirty judicatories, offensive of the same grade are punished more or less severely according to the different ideas of different magistrates, arising from the too great latitude of discretion vested in the courts of justice. If the calendars of convictions and judgments are examined, the same offences, probably accompanied with the same circumstances of atrocity, will be found punished by confinement at hard labor in the state prison for periods varying from one to ten years; they may vary from one to fourteen years. While so vast a disproportion exists between the punishments annexed to these different species of larceny, where in the degrees of criminality not a shade of difference is to be perceived, simple and compound larcenies are subject to the same punishment, though the latter generally evince greater depravity, and ever produce greater injury to society than the former. Thus no distinction is made between forcibly entering a dwelling and committing a larceny therein, where not done burglariously, and feloniously taking the property of another when exposed in the highway.

Ascending from the lowest to one of the highest species of felony, a similar defect presents itself. In the crime of murder, there are various degrees of turpitude, but no discrimination of punishment. A deliberate and premeditated killing, with express malice, is certainly more criminal in the eye of religion and morality, than where the malice arises by legal implication alone. So murder committed in the perpetration, or an attempt to perpetrate, any of the higher offences, is certainly more criminal than where it is the consequence of an intended trespass, or a mere want of due caution. These distinctions, I am persuaded, accord with public sentiment, as must be evident

to all those who have witnessed the embarrassment of jurors, when directed that the law imposes upon them to find one guilty of murder, whom they verily believe never intended to commit it. This is placing them in a delicate situation, and offering violence to tender consciences.

The crimes of forgery and counterfeiting are also susceptible of a classification of their various species. A detailed plan of such an improvement would far exceed the proper limits of this address. I shall therefore reserve it for a future occasion.

In the event of an interruption of the harmony which has subsisted between the United States and the maritime powers of Europe, we cannot but look with anxiety towards the defenceless state of our principal sea port. To afford it complete protection against an invading force, would require an expense beyond the ordinary resources of the state, and is an object emphatically appertaining to the general government. As far as it may be effected by militia arrangements, it is certainly our duty to attempt it. I shall for this purpose, in the course of the session, submit to your consideration a plan for organizing a brigade of artillerists, and corps of Engineers to be provided with a competent park of heavy field artillery, howitz, mortars, and the necessary apparatus for the use of hot shot, which may afford protection against single ships, and even small squadrons. An estimate of the expense will also be submitted.

I cannot conclude, gentlemen, without calling your attention to a subject which my worthy and highly respected predecessor in office had much at heart, and frequently I believe presented to your view, the encouragement of literature. In a government resting on public opinion, and deriving its chief support from the affections of a people, religion and morality cannot be too sedulously inculcated. To them science is an handmaid; ignorance the worst of enemies. Literary information should then be placed

within the reach of every description of citizens, and poverty should not be permitted to obstruct the path to the fane of knowledge. Common schools under the guidance of respectable teachers should be established in every village, and the indigent be educated at the public expense. The higher seminaries also should receive every patronage and support within the means of enlightened legislators. Learning would thus flourish, and vice be more effectually restrained than by volumes of penal statutes.[6]

With grateful acknowledgments to a beneficent God for the large portion of national prosperity he continues to bless us with, permit me, gentlemen, to assure you of my ready co-operation in every exertion you shall make to add to the mass of general happiness.

MORGAN LEWIS.

Albany, November 6, 1804.

SPECIAL MESSAGES.

November 6. To the Assembly:

Objections by the Council of Revision to a bill "concerning libels."[7]

"Because the bill making no discrimination with respect to the nature, tendency or intent of the libel, is calculated to subject men in, or candidates for, office to wanton and useless obloquy — to have their mental foibles or corporal

[6] No general school law was passed, but chap. 108, passed April 9, 1805, incorporated "the Society instituted in the City of New York for the establishment of a free school for the education of poor children, who do not belong to or are not provided for by any religious society."

Union College was provided for by chap. 62, passed March 30th. The act authorized lotteries for the purpose of raising funds for an endowment of the college.

The establishment of a common school fund was recommended by the Governor in the special message of February 5. The action of the Legislature thereon will be found in note 9.

[7] The libel bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chap. 90, on the 6th of April, 1805.

infirmities exposed, distorted and exaggerated; although such foibles or infirmities may neither detract from the integrity of their moral or political characters, from the rectitude of their official conduct, or from their ability to discharge the duties of the places they fill or are candidates for, beyond which the public cannot have any essential interest that can possibly be promoted by the publications described in the bill — thus leaving the feelings of private citizens sheltered by the salutary restraints of the existing laws, and abandoning those of the public functionaries to the merciless laceration of malice and revenge, and permitting factious, turbulent or discontented individuals to awe and humble the spirit of officers disposed to discharge their duty faithfully, and whose independence and respectability it is of the utmost importance to the community effectually to preserve, holding them only responsible for the legitimate exercise of the powers entrusted to them for the public good."

November 10. Thanking the Senate and Assembly for their addresses.

November 12. The Legislature adjourned to meet on the fourth Tuesday of January, 1805.

SECOND MEETING, JANUARY, 1805.

January 28. To the Legislature:

"GENTLEMEN.— I have the honor to submit to the consideration of the Legislature, a concurrent resolution of the senate and house of commons of the state of North Carolina, transmitted to me for the purpose by the executive of that State.[8]

[8] The North Carolina resolution proposed an amendment to the Federal Constitution prohibiting the importation of slaves from the West India Islands. The Assembly adopted a resolution declaring it inexpedient to approve any plan to restrict the importation of slaves from the West Indies, Africa, or elsewhere prior to 1808.

That I may not too frequently interrupt the deliberations of the two houses, I avail myself of this occasion to lay also before them some circumstances which have occurred, and some ideas which have presented themselves, since I had the honor of addressing them at the opening of the session, which appear to me sufficiently important to claim their attention.

The Cayuga nation of Indians have exhibited a formal complaint against certain citizens of this State, for intruding and committing trespasses upon their reserved lands lying in Cayuga county. They ask the aid of the State to restore them to the possession of their property, with a compensation in damages for the injury sustained. A provision, similar to that which obtains in cases of trespasses committed on lands of the Oneida or Stockbridge Indians, would, I presume, be adequate to the object.

Gautinonty, a savage, styling himself chief of the Oswegatchie nation, is now in this city, representing a grievance, which he prays the government to redress. He states that his tribe is the parent stock of the Onondagas and Cayugas; that they have possessed, from time immemorial, a tract of country extending along the St. Lawrence from the mouth of Ganonoque River to Cat Island, a distance of about seventy miles. That the boundary between them and the St. Regis or Canawaga Indians was, by consent of parties, fixed and established by Sir John Johnston, who, for that purpose, erected a monument on the said island. That the British government built for them twenty framed houses near the Oswegatchie river, where some of them still remain, deriving a subsistence from agricultural pursuits. That the state claims title to their lands by virtue of a purchase of the Canawagas, who had no right to sell them, and that they have never received any compensation. That persons claiming title under the state have ordered them to quit their habitations. That it is their wish to remain where they are, and that the State would secure to

them each a farm, with a competent portion of hunting ground.

From documents on file in the executive department, it would appear that this is not a novel claim. That its being disregarded, is the consequence of a declaration of the St. Regis Indians, that those of Oswegatchie were their tenants at sufferance. Opposed, however, to the truth of this assertion is, an attempt made by the Canawagas, in 1803, to justify trespasses committed on Rapide-Plat islands, by pretext of a purchase made by them of the Oswegatches.

An examination of this claim, in some mode which the wisdom of the legislature shall suggest, I have ventured to assure the chief and his followers, will not be denied them. They await the result of this communication.

At the last session of the legislature a very necessary and important general regulation, as to carriages passing each other on public roads, was by law established. Partial regulations, differing from this general one, having previously obtained in certain counties, in consequence of laws for the purpose, doubts have arisen whether they are not still in force. In some instances they have been adhered to with a pertinacity which has produced serious consequences. Although, as a question of law, there can be no doubt on the subject, still as every man is not a lawyer, I submit the propriety of leaving no room for doubt by a direct abrogation of all such partial regulations.

The acts for giving relief in cases of insolvency, and of absconding and absent debtors, might be considerably improved, by giving greater publicity to the several notices required by them. A defect in this particular is frequently attended with inconvenience and loss to creditors under the former, and to debtors under the latter act. Publication in at least one, if not more, of the newspapers printed in the city of New York, would, from the extensive circulation of those papers, in a great measure remedy the evil.

The length of time which unavoidably intervenes between

the close of each session and the publication of its laws in a volume, has been the subject of almost general complaint. Permit me to suggest the expediency of causing each act, as soon as it shall become a law, to be published by authority in one newspaper at the least, in each great district of the State. This system, with trifling variations, has been adopted in several of the States. The expense will be a small object, when compared with the advantages which will result; for, in addition to silencing the above complaint, it will afford an easy mean, whereby almost every citizen of the State may furnish himself with a copy of the laws. The mode adopted in some of the States is, for the secretary to cause a sufficient number of copies of each act to be cut out of the official paper published at the seat of government, and after collating them with the original on file, to transmit them to the several printers.

MORGAN LEWIS."

Albany, 28th January, 1805.

February 5. To the Assembly:

"GENTLEMEN.— Understanding that the attention of the Legislature is about to be directed to the promotion of literature, and believing that any ideas which may tend to cast the least glimmer on so important a subject, will not be unacceptable to gentlemen engaged in so laudable a pursuit, I venture to offer to your consideration such as have occurred to my mind, with all that diffidence which novelty and the magnitude of the object is calculated to inspire. The plan I shall propose, is not one that can immediately go into full and efficient operation. The ground work, however, should it meet with approbation, may, if not at the present, at the next session, be laid — and the lapse of a few years, if I do not indulge a visionary expectation, may rear an edifice sacred to science, morals and religion, which shall exalt in dignity the American character.

The first essential to the support of a general literary institution, in all its various ramifications, is the establishment of an adequate, permanent and certain fund. In looking into the finances of the State, it will be discovered, that nothing can be spared from her ordinary revenue. The unappropriated lands which still remain to her, present the only sure resource. Of these she still possesses 1,500,000 acres, which certainly cannot be devoted to a more noble end. On a moderate computation these lands may be estimated as forming a capital of $1,000,000, which, at an interest of six per cent. will yield an annual income of $60,000. The mode of disposing of them, which I should prefer, would be, to have them laid out into convenient farms, with a price affixed to each according to quality of land, and contiguity to market. Sales should then be made to applicants, on condition of actual settlement, and patents granted, reserving a rent charge equal to the interest on the purchase money at the rate aforesaid, with permission to the purchaser to discharge the rent at any time by a payment of the purchase money. One, two or three years might be allowed free from rent, according to circumstances. The advantages in favor of this mode are many. Honest industry would be furnished with the means of profitable exertion, without the aid of capital; payment of rent would not be called for till it could be made out of the product of the land; and the expectation of being compelled to pay a large principal, when very inconvenient, or perhaps impossible, would not be incessantly dampening the ardor and the spirits of perhaps the worthy fathers of promising families.

To those who object to such disposition, from a desire to see an overflowing treasury at the disposal of the government, I answer, that the true riches of a state is its efficient labor; its physical strength; its yeomanry. A rich treasury is frequently an evil. It too often becomes the

parent of speculation, and the corrupter of the administrators of the government.

The fund being once established, the next inquiry is as to its disposition. This might with safety be confided to the regents of the university; the great outline of their conduct being described by the Legislature. A competent sum being first appropriated for the support of colleges, the residue should be applied to the support, perhaps, of academies, but certainly of common schools. These latter should be established throughout the State, by dividing each county into a competent number of school districts, according to its geographical extent and population: and the regents of the University should have the power of appointing three trustees for each district, who should be authorized to fix the place for the schoolhouse, erect one where necessary, employ a competent teacher, have the disposition of the funds allotted them, with an authority to levy and collect of the inhabitants of the district, according to the circumstances and abilities of each, such further sums as might be necessary for the support of the school, and the maintenance and tuition of such poor children as may be objects of charity; the division of the county into districts, and the sum allotted to each, to be at the discretion of the regents of the university.

The support of academies by aids from this fund I have stated hypothetically, because there are many weighty objections to their composing a part of a general system of education. Those which occur to me are, the difficulty of keeping them constantly supplied with unexceptionable teachers. The academies which have fallen under my observation, have all of them been, at some period, for months without a teacher. This is owing in a great measure to the necessity of employing young men, just from college, who enter into these situations merely to acquire the means of prosecuting the learned professions, which when achieved, they bid adieu to the academy. A suspen-

sion of academic instruction is the consequence, and before a successor can be procured, the students are frequently dispersed. Add to this, that each new teacher introduces a new system of education. The systems established in different academies also vary according to the acquirements and ideas of the various teachers. A consequence is, the almost insurmountable difficulty of pursuing with effect a collegiate course when the preparation has been so various.

A grammar school, attached to a college, and under the direction of its faculty, is free from these objections. An attention also to morals can here be afforded, which in academies is impossible. Should, however, academies be deemed indispensable, the same course of study should be prescribed to each.

Colleges, though last considered, are not the least important graduation in the scale of academic institutions. If national prosperity, if national pride, which is an honest pride, shall warm our bosoms with a wish to see our country great in the various arts and sciences, the prolific parent of statesmen, legislators, divines, &c. we cannot regard colleges with too much partiality. When judiciously arranged and conducted, they become the bounteous source of knowledge, of virtue, of piety, of all that is great and good. The arrangement of the buildings should be such as to completely cloister the students; who should never pass the walls but by permission. The endowments should be sufficiently liberal to secure teachers the most respectable for talents, for morals and for manners. Liberal endowments, particularly where the plan of education is economical, tends to diminish the expense, so as to place liberal education within the reach of the respectable yeomanry of a country, where the most virtue ordinarily exists, and from among whom no inconsiderable part of the professional characters in a government like ours ought to be taken. Where this end is likely to be attained, the lib-

eral endowment of seminaries of learning is obviously the application of the public funds for the benefit of the middling and poorer classes of community. For, if seminaries of learning are not patronized by the state, and for the want of this patronage, a liberal education is very expensive, the consequence will be, that the rich alone can afford to educate their children; a consequence not desirable in any government, and highly dangerous in our own.

Though the whole plan, as suggested above, cannot be carried into immediate effect, and though, perhaps, a step so important to the state, as the disposing of all her unappropriated lands ought not to be taken, till some time has elapsed for the expression of the public sentiment, the attention of the legislature may safely be directed to this subject, and in the meantime a complete system in all its detail be maturing.

The same reason for delay with respect to the higher seminaries, where a proper system is already adopted, does not exist. These seminaries are the nurseries in which the instructors of common schools are to be reared; and no time should be lost in placing them on the most respectable and independent footing: that those from among the middling and poorer class of community, who wish to give their sons a liberal education may have it in their power to do so, without being at the inconvenience and expense of sending them to other states, as is now the case; a reproach to the state of New York, which it is hoped her enlightened and patriotic legislators will speedily wipe away by rendering her as independent in her literature, as she is in her resources and her government.

These ideas are hastily thrown together. They are, however, the result of former reflections through a course of twenty years that I have had the honor of being a trustee of Columbia College. They will probably be found liable to many objections. Should they fortunately throw the least light on a subject that lies near to my heart, and have

the least tendency to promote the first object of my wishes, (the diffusion of knowledge) my end will be attained.[9]

MORGAN LEWIS."

4th February, 1805.

February 13. To the Senate:

"GENTLEMEN,—You will receive herewith two resolutions of the legislature of the state of Kentucky,[10] together with reports from the governors of the New York Hospital, the Commissary of Military Stores, and the Inspector General of Staves and Heading.

From the first of these reports it appears that the annuity granted by government to this charitable institution has been applied to the most honorable, useful and benevolent purposes. The period for which it was granted, terminated on the first instant; having been limited to five years, for the purpose, it is presumed, of testing the utility

[9] A joint committee was appointed to consider this special message on public education. On the 25th of February the committee presented its report to the Assembly, expressing the opinion "that common education will leave a very salutary influence on the rising generation, to correct their morals, improve their minds, and prepare them for useful stations in society; besides that, it will reflect the highest honor on the State to patronize literature." A bill to accomplish the purpose of the message was passed and became a law, chap. 66, on the 2d of April, 1805. It set apart five hundred thousand acres of unappropriated lands for the purpose of establishing a common school fund. Such land was to be sold and the proceeds invested by the Comptroller. After the interest had accumulated to $50,000, the interest on the fund was to be used for the support of common schools.

[10] One of the Kentucky resolutions adopted November 27, 1804, recited difficulties arising from litigations concerning land titles, owing to the peculiar jurisdiction of the Federal courts, it being claimed that non-residents obtained an undue advantage over residents, wherefore it was proposed to amend the Federal Constitution by limiting the jurisdiction of the Federal courts to "cases in law and equity arising under the Constitution and laws of the United States, and treaties made, or which shall be made, under their authority; cases affecting ambassadors or other public ministers and consuls; cases of admiralty or maritime jurisdiction, controversies to which the United States shall be a party; and to controversies between two or more states."

The other resolution, adopted December 17, 1804, protested against the amendment proposed by Massachusetts, changing the rule of representation in Congress. See note 3.

of the institution. The experiment which has been made, fully justifies the wisdom and benevolence of the appropriation, and inspires a hope that the liberality and humanity of government will apportion its further endowment, to the enlarged plan on which it is contemplated henceforth to conduct this valuable and indispensable infirmary.[11]

On the report of the commissary of military stores, I would observe, that the Hamborough arms there spoken of, I have personally examined, and am of opinion that their construction fully justifies the observations of the commissary. They are evidently so defective as to render the use of them extremely hazardous. I apprehend some mistake as to the number stated. If my memory serves me, it ought to have been three instead of two thousand.

I perfectly agree with the commissary as to the inadequacy of the compensation allowed to the deputy at this place. It is certainly disproportioned to the important duty he has to discharge.[12]

On the subject of arsenals and magazines I beg leave to refer you to the pertinent observations of my predecessor in office, whose ideas perfectly correspond with my own.

MORGAN LEWIS."

Albany, 13th February, 1805.

February 25. To the Assembly:

Objections by the Council of Revision to a bill "to enable the rector, church wardens and vestrymen of St. Ann's Church, of the town of Brooklyn, to sell their parsonage house and lots of ground thereto appertaining, for the purposes therein mentioned." [13]

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[11] The provision for the support of the New York Hospital was revived by chap. 21, passed March 2, to be continued for five years from the 1st of February, 1805.

[12] Chap. 100, passed April 9, answered this suggestion by providing additional compensation to the deputy commissary.

[13] This bill, for the relief of St. Ann's church, Brooklyn, was passed over the veto, and became a law chap 38, on the 13th of March.

"1st. Because the bill contains no intimation whence the disability of the rector, church wardens and vestrymen therein described, to sell and convey the property they are supposed to hold, originates — thus leaving it to operate in affirmance of any estate they may assume to grant, or in avoidance of any legal restraints which may have been imposed on an absolute alienation.

2d. Because, although from the provisions in the bill, it is to be inferred that the said rector, church wardens and vestrymen therein described are incorporated, it does not appear that application has been made by them under their common seal, for the alteration of the corporate rights which may be vested in them."

February 27. To the Assembly:

"GENTLEMEN.—You will herewith receive, from the commissioners appointed under the act for improving the navigation of Hudson's river, a report, accompanied by a certificate of several masters of vessels, showing the result of an experiment which, an anticipation of a part of the fund destined to the object, has enabled them to make. The effect appears to justify the expectations of the projectors, and to warrant an exertion on the part of the government, to enable them further to extend a work, promising advantages incalculable, to the agriculture and commerce of the northern and northwestern parts of the state.

MORGAN LEWIS."

The particular improvement mentioned in the report and the certificate of masters of vessels, consisted of a pier at Winney's Bar about eight miles below Albany, which had the effect materially to improve navigation and facilitate the passage of vessels at that point.

March 2. To the Assembly: Transmitting a communication from the Massachusetts legislature proposing an amendment to the federal constitution relative to the im-

portation of slaves from the West Indies. See note 8 for the North Carolina resolution on the same subject. The Assembly declined to approve this proposition.

March 22. To the Senate:

Objections by the Council of Revision to a bill "for the relief of Nathaniel Shaler and others." [14]

"1st. Because the bill not only enables Nathaniel Shaler therein named to complete the contracts of sale, which he had made prior to the death of William Constable by virtue of attorney from him, but to proceed under the said power and sell the residue of the lands therein specified, and which are stated in the bill to William Constable, a son of the said William Constable, deceased, and who is now an infant under the age of twenty-one years, thereby absolutely disposing of the real estate of the said minor, contrary to the just rights of property and the general principles of law.

2d. Because, if it be deemed necessary that the real estate of the said minor should be sold, it ought at least to be done under the direction, and at the discretion of the court of chancery, so that the respective interests of all parties concerned might be duly examined, adjusted and secured."

March 27. To the Senate:

"GENTLEMEN.—Permit me to state to you an embarrassment which frequently occurs, and never fails to produce consequences unfriendly to the military service. By the 8th section of the act of Congress for establishing an uniform militia throughout the United States, officers of equal grade are to take rank according to the date of their commissions. The mode prescribed by the constitution

[14] The Shaler bill was not passed over the veto, but another bill on the same subject was passed, chap. 95, and became a law on the 9th of April.

of this State for the appointment to office,[b] renders it impossible to fill vacancies as soon as they occur; a consequence is, the frequent occurrence of two officers being promoted on the same day to ranks of equal grade, when one was perhaps entitled twelve months before the other. Controversies about rank are therefore an eternal source of discord; and as few persons can submit to a decision which oppugns their wishes, harmony is frequently only to be restored by the loss of a valuable officer.

To remedy such inconveniences, I submit to the consideration of the Legislature, the propriety of authorizing the governor to date all military commissions according to the relative rank of the officers who are to bear them, without regard to the date of the appointment.

I cannot in justice to the military service refrain from stating also, that after a fair experiment, I am satisfied the present system of inspection is far inferior to that by which the adjutant general was inspector general also.

Economy was one great object of the alteration;—this has not been obtained, as will appear by the report of the comptroller of the treasury, a larger sum exclusive of fines and penalties having been expended, than the amount of the deduction from the adjutant-general's salary. The office of inspector general is an important one, and without an able discharge of his duties, no army or militia will ever attain to eminence in discipline or equipment. One result of the present system is that I am not yet furnished with the returns of last year.

In pursuance of authority vested in me, by an act of the Legislature, I have added another regiment to the artillery in the city and county of New York, and have formed them, together with a battalion composed of the brigade companies of artillery from Long Island, Richmond, Westchester and New York into a brigade. As the

[b] Const. 1777, §§ 23, 24.

protection of the city of New York may, at some future period be committed to this brigade, it is of importance to render it as efficient as possible; for this purpose it is proposed, and I am assured will be adhered to with alacrity, that they should, at stated periods, take the field, and form an encampment. This becomes the more necessary, as they have not ground to manoeuvre upon within the distance of four miles from the center of the city, where a field is, by the corporation appropriated to the purpose. To effect this object, some articles of camp equipage will be necessary, particularly tents. The sum of 6000 dollars will furnish the necessary supply, and, with the permission of the legislature, will be raised by lottery under the management of the officers of the corps in a very short period of time.

MORGAN LEWIS."

Albany, 26th March, 1805.

March 29. To the Legislature:

"GENTLEMEN.—I take the liberty of suggesting to you that the act passed in 1803, continuing the office of comptroller, expired with the 28th of February last, and that as many important acts have been performed by that officer since that period, it will be necessary in reviving the office, to confirm them.[15]

I have also the honor to transmit to you the annual report of the Regents of the University.

MORGAN LEWIS."

Albany, 29th March, 1805.

March 31. To the Assembly:

Objections by the Council of Revision to a bill "to incorporate the trustees of the Marine Hospital in the city of New York."

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15 The office of Comptroller was revived, and continued by chap. 60, passed March 30th. The statute also confirmed the acts of the Comptroller performed since the expiration of the previous law.

"Because the said bill having for its object the incorporation of certain persons therein named, holding offices in this state, and their successors in office, for the purpose of carrying into effect the intentions of Robert Richard Randall, deceased, and who, as it appears by the recitals of the said bill, by his last will and testament, devised and bequeathed the residuum of his estate to the said persons intended to be incorporated, in trust, to receive the rents, issues and profits thereof, and to apply the same to building, on some eligible part of the land whereon the testator resided at the time of his decease, an asylum or marine hospital, to be called 'The Sailors' Snug Harbor,' and there being no provisions in the said bill for continuing the description of the said hospital pursuant to the wishes of the testator, his said will in that respect is needlessly defeated.

2. Because it appears by the recitals to the said bill, that the rents, issues and profits of the testator's estate were, by the said bill, to be appropriated for the purpose of maintaining and supporting aged, decrepit and worn out sailors, as soon as the said trustees or a majority of them should judge the said proceeds would support fifty of such sailors and upwards; yet without any suggestion that the said proceeds of the testator's estate will not be sufficient in a short period to effectuate the objects of his charity, and the third section of the said bill authorizes the said trustees to apply the said proceeds for the purposes expressed in the said will, as soon as they shall deem it expedient so to do, although the funds arising from the said estate may not be adequate to the support of fifty sailors; and thus the said will of the testator is defeated in an essential part thereof, contrary to the received axiom, that he whose right it is to give has a right to modify his gift as he sees fit. If the will of the deceased is thus controlled and altered by the Legislature, it must be obvious that persons disposed to bestow their

estates for laudable and charitable purposes, under limitations and plans of their own devising, will be prevented by the example of the present bill, should the same become a law, and thereby will be destroyed incentives the most powerful and operative to the extension of charity and the alleviation of the sufferings of humanity."

The bill was not passed over the veto, but the institution was incorporated by chapter 4, passed February 6, 1806. It was located in the city of New York, and was called the Sailors' Snug Harbor.

April 6. To the Assembly:

"GENTLEMEN.—I have the honor of transmitting you the annual return of the militia of this State. Also of informing you that I have received from the Secretary of State of the United States, one thousand and fifty-four copies of the laws of the United States, passed at the first session of the eighth Congress, which are placed at the disposal of the Legislature.

MORGAN LEWIS."

6th April, 1805.

April 10. The Legislature adjourned without day.

1806. JANUARY. LEGISLATURE, TWENTY-NINTH SESSION.

MORGAN LEWIS, Governor.

The Legislature met the 28th of January, at which time the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—Since last I had the honor of addressing you within these walls, oc-

currences have arisen, involving the dearest interests of our country. Our exterior relations have assumed an aspect threatening to that tranquillity, the basis of national prosperity, we have so long enjoyed. Principles unknown to the maritime law of nations have been adopted and enforced in the prize courts of some of the belligerent powers of Europe, repressive of our commercial enterprise and destructive of the most important branch of our foreign trade. Violations of territorial rights, and breaches of national faith solemnly pledged have swelled the catalogue of our wrongs. The issue of these dark forebodings is as yet hidden from us. Should the result be open hostility, it behooves us to place ourselves in that state of preparation, which shall preserve our rights and protect our honor. In the event of war, the possession of our sea ports would be a leading object of military achievement. The one which forms the depot of the surplus product of the agriculture and commerce of this state, is, of all others, the most unprotected. On this interesting subject, representations have been made by the corporation and merchants of the city of New York to the general government. I have also written to the president of the United States. But, from the amount of the appropriation proposed to be made for the fortification of harbors by a recent report of a committee of the house of representatives, nothing very efficient is to be looked for from that quarter. It remains then, gentlemen, a question for your consideration whether in this state of things, you will not make an effort towards the protection of the key of your state, and the seat of your wealth.[1] The expense will

[1] The Senate committee, which had in charge the part of the Governor's speech relative to coast defences, of which DeWitt Clinton was chairman, presented on the 25th of March a report setting forth at length the defenceless condition of New York, the dangers to commerce that might result from a war with a maritime nation, and the slow procedure and inadequate preparations for defense made by the national government, and proposed a detailed plan for the defence of New York harbor. The committee also brought in

certainly be great. It may, however, by judicious management be rendered so gradual as to be little oppressive. Guided by the report before mentioned, we are led to the conclusion that the federal administration contemplate a defence of our harbors by gun boats principally. These may form an important item in a general plan; but in my conception, can only be effectual when acting in concert with land batteries. Should it be thought advisable to commit this subject, I will lay before the committee such information and plans as I am possessed of. Meanwhile I cannot omit calling to your recollection, gentlemen, the act of the 28th of March, 1800, by which the state stands pledged for the expenditure of a sum in fortifications equal to that assumed by the United States in the debt of this state. The amount of that assumption was one million two hundred thousand dollars, of which the state subscribed one million one hundred and eighty thousand seven hundred and sixteen dollars sixty-nine cents — equal in specie, upon the principles of adjustment established by the act of congress of the 15th of February, 1799, to the sum of seven hundred and sixty-eight thousand three hundred and twenty dollars fourteen cents. In part satisfaction of this debt, the state has received a credit on the books of the treasury of the United States for one hundred and thirty-six thousand five hundred and thirty-three dollars and

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a bill for the better defence of the State, intended to carry out the plan recommended in the report. A concurrent resolution was also adopted directing the New York senators and representatives in Congress to "represent in the most earnest manner to the national legislature, the peculiarly unprotected condition of the port of New York; to use all proper exertions to obtain appropriations of money adequate to its complete defence, and to express to the president and congress the high confidence which this State reposes in their wisdom and patriotism, and its firm determination to unite with them in all requisite measures, for the protection of the honor, the interests and the territory of the United States."

Chap. 166, passed April 7th, embodied the results of the Legislature's deliberations on this subject. The act authorized the Governor to expend $62,000 for the purchase of ordnance, artillery, and ammunition.

eighty-two cents, expended previous to the passing of said last mentioned act, and is entitled to a further credit for expenditures subsequent thereto, of one hundred and seven thousand seven hundred and nineteen dollars seventy cents (which I have directed the comptroller to adjust with the secretary of the treasury of the United States) leaving a balance still to be expended by the state of five hundred and twenty-four thousand and sixty-six dollars seventy cents, to entitle her to a discharge from all demands on the part of the United States.[2]

Next in importance to the defence of our chief city is the preservation of the health of its inhabitants. It has pleased the sovereign disposer of events, in the dispensations of his providence, to permit pestilence again to visit them through the course of the last autumn. The cause of this dreadful scourge being unascertained, it is difficult to say what measures should be resorted to to prevent its repetition. On this subject the board of health, whose zeal and exertions do honor to their humanity, and justly entitle them to the meed of public applause, can probably best advise. Should it require legislative aid, it doubtless will be afforded. And it is confidently hoped that the burthen of averting a great national calamity, affecting the

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2 The subject of the balance claimed to be due from New York to the United States, was considered by a committee of the Senate, which presented a report on the 25th of March, giving a history of Federal legislation, determining the balances against the several States, reciting that such Federal action had been taken without New York's consent or ratification, and was, therefore, as to this State, wholly void, and declaring that by the cession to the United States of valuable islands in and about the harbor of New York the State had surrendered property at least equal in value to the supposed balance; whereupon a concurrent resolution was adopted "that this Legislature, relying on the justice and patriotism of Congress, and being strongly impressed with the injustice which has been done to this State in the settlement of accounts between the United States and individual states, request the senators and representatives of this State, in the Congress of the United States, to use their best endeavors to have an act passed to release the pretended claim of the United States against this State, for the aforesaid balances."

interests of a whole community, will not be permitted to rest solely on a meritorious portion of it.[3]

During the last recess I have had an opportunity of reviewing and inspecting a considerable section of the militia, whose military improvement and soldiery deportment far exceeded my most sanguine expectations. Such has been the progress of many regiments, that they are capable of performing several important evolutions, with a celerity and precision that would not disgrace regular troops; the greatest defect met with, particularly among the inhabitants of the new settlements, is the want of arms. Many of our hardiest and most robust citizens are destitute of the means of procuring them. And where this is not the case, the country does not furnish a number sufficient for all those whose pecuniary circumstances would enable them to purchase. Nor are the arms they have such as they should be. Numbers of them are in bad order, from the want of skillful workmen to keep them in repair. Various also in sort and size — a circumstance which in time of actual service would be productive of great embarrassment. A difference of calibre alone, from a consequent variety required in the size of cartridges, caused inconveniences during our revolutionary war, too serious ever again to be hazarded, without incurring the imputation of criminal neglect. The only remedy for the evil which promises to be effectual is to arm the militia at the expense of the state. Many are the advantages which would result from the measure. All would become contributors towards the general defence. The arms might be of one stamp, and nearly of the same quality, and in case of invasion, we should not be destitute of an indispensable mean of self preservation. Should you, gentlemen, resolve on this measure, the preferable methods of procuring and preserving them are to be considered. To import

[3] Chaps. 78 and 79, passed March 21, contained provisions relative to public health in New York.

them from abroad in the present convulsed state of Europe, is probably impracticable. And were it otherwise, there are in my opinion, irresistible inducements to give a preference to home manufacture. We shall insure an exemption from impositions which have been heretofore practised upon us. Possessing the crude materials within ourselves, we shall, under no circumstances, render an essential mean of defence precarious from hostile interruptions of our commerce. We shall give encouragement to our own artizans, and promote the home consumption of staple commodities, of which our rapidly progressing industry promises ere long to produce quantities which shall seek a foreign market in vain. In preference to contracts which are ever the fruitful source of controversy, I shall recommend the establishment of a manufactory under the direction of proper officers of the government, upon such a scale as the resources of the state shall justify. With attention and economy, this mode promises to be least expensive and most effectual. Virginia, I am informed, has such an establishment, where five thousand stand of small arms are annually produced, at an average expense of not more than ten dollars per piece. When a sufficient number are provided, they may be distributed among the different regiments, to be deposited in an armory to be erected in some central position within the limits of each, under the charge of an armorer, provided and supported at the expense of the county. On field days they might be delivered for use, on the responsibility of the proper officers, to be returned as soon as the parade shall terminate.

Another defect in our military equipment is the almost universal want of experienced drummers. The drum is all important in the day of battle. It must frequently be resorted to as the only mean of announcing to the troops intended movements, and may thus decide the fate of an army. I submit to you, gentlemen, whether measures

ought not to be adopted, which shall insure a competent number of persons skilled in the martial exercise of that instrument.

From the returns of the commissary of military stores, it appears that the whole park of brass field artillery belonging to the state, consists of but sixty-three pieces, the heaviest of which are six pounders. We have already, including the two regiments in the city of New York, fifty-three companies of artillerists, and there ought to be at the least two pieces in a company. The two regiments in the city of New York, if ever called on to act against shipping, should be provided with pieces of a heavier description. That they may be accustomed to the use of them, the immediate purchase of two light brass twenty-fours, weighing about eighteen hundred each, two medium twelves, and two eight inch howitzers, would be advisable. The probable cost will be about eight thousand dollars. A supply of ammunition it appears is also much wanted. [See note 1.]

For the accomplishment of these various objects I conceive an appropriation of one hundred thousand dollars per annum may be made with little, if any, inconvenience. On looking into the fiscal department, it will be found that the ordinary revenue of the state for some years to come, will fall little short of three hundred thousand dollars per year; that the ordinary expenses, on an average of four years past, do not exceed one hundred and sixty thousand dollars, leaving an annual surplus of one hundred and forty thousand dollars. As a considerable portion, however, of this income arises from debts of individuals, in the payment of which, there is little punctuality, the actual receipts of the treasury cannot be calculated to exceed a sum which would, leaving a sufficiency for contingencies, warrant an appropriation from the surplus of ordinary revenue, of more than forty thousand dollars per annum. The deficiency of sixty thousand dollars may be derived

from the avails of a semi-annual state lottery, or such other sources as the wisdom of the government shall point out.

In the course of examination into this department of the government, I observe demands against individuals of very long standing, which ought in some way to be disposed of.

The collection of debts due to the state, particularly on the sale of lands, in ordinary course of judicial proceeding, is dilatory to the one party, and expensive to the other. The propriety of devising a mode less exceptionable to be applied to all future contracts, merits consideration.

Our statute book is annually swelled to an useless size by the insertion of private acts. Those for the incorporation of turnpike companies occupy many pages. Frequent revisions of the laws might be avoided, and a considerable saving in the expense of legislation effected, by excluding them, and by establishing general principles on which all such companies shall in future be incorporated.[4]

The propriety of auctioneers holding appointments under the government, I have long questioned. There may be substantial reasons for the practice, but I confess I cannot discover them. It certainly is liable to many objections. It is a source of patronage and favoritism unfriendly to the republican system. It deters individuals who engage in this line from making those permanent establishments, calculated to beget that ability, punctuality and consequent respectability which will ever prove the surest pledge of a faithful discharge of the various trusts confided to them. I cannot but believe that the business

[4] No general law was passed at this session, but a concurrent resolution was adopted directing the Attorney-General to prepare a bill to be presented at the next session "for regulating in future the incorporation of turnpike companies, and fixing the terms on which such incorporations shall hereafter be granted." A bill was prepared accordingly, and passed at the next session, becoming chap. 38, on the 13th of March, 1807.

Chap. 138, passed April 4, 1806, was a general act for the incorporation of medical societies.

would be conducted more to the advantage of the community, and the benefit of the treasury, to be laid open to every one who chose to engage in it, and could give the required security, than by continuing it in that precarious state, where the slightest variations in party, or superiority in intrigue, may in a moment deprive a family of its bread.[5]

In the discharge of a highly important executive trust, I have been constrained to refer, gentlemen, to your consideration two cases of an unpleasant, though serious and interesting nature. They are cases of murder; each attended with circumstances calculated to excite indignation. They will, notwithstanding, receive, I trust, a candid and dispassionate examination. Stephen Arnold was convicted at a court of oyer and terminer, held for the county of Otsego before the chief justice. No one more highly estimates the talents, learning and judicial decisions of this gentleman than I do. Few lawyers, if any, are more generally correct in their opinions. Yet in the hurry of the business of a circuit where little time is afforded for reflection, that accuracy cannot be expected which is usually the result of more deliberate inquiry. This reflection strengthened a first impression, on reading the report, that

[5] The act to regulate sales by public auction, and to prevent stock jobbing, chap. 116, passed April 2, 1801, required auctioneers to be annually appointed by the Governor and Council of Appointment, and regulated generally sales at auction, and the conduct and duties of auctioneers. In 1804, by chap. 65, passed April 6, this act was amended as to several details. The amendatory statute was to continue in force only until the first day of March, 1806. It was revived by chap. 81, passed March 28, 1806, and was to continue in force until March 1, 1808. No change was made in the method of appointing auctioneers, who under the act of 1801 became political appointees. The Governor's objection to the political character of the appointment was not immediately approved by the Legislature. The scheme of appointments prescribed by the act of 1801 was continued by the Revised Laws of 1813, and under the second Constitution by the act of 1823, chap. 197, and also by the Revised Statutes, the last two laws substituting the Senate for the Council of Appointment. The act of 1838, chap. 52, adopted the suggestion made by Governor Lewis, and authorized any citizen to act as auctioneer on filing a bond with the Comptroller.

the case was new, and involved questions of law meriting further investigation. The result of my examination is, that no case precisely similar to this in all its circumstances ever before received a judicial decision; at least that none is reported. It must rest then upon general principles; and although I do not venture to say, for it is not my province to decide a question of law, that these principles have been misapplied, it is sufficient to justify my referring it to a higher tribunal, that there appeared to me sufficient cause for doubt. It certainly would have been the correct course to have referred the question to the bench of judges, but for this there was not sufficient time between my receiving the official report of the trial and the period assigned for the execution of the sentence, which was but fifty hours, and the place of execution one hundred and thirty miles distant from me. Under these circumstances I took the only course prescribed to me by the constitution.[a] The common law doctrine upon this subject is not questioned. Certainly where the death of a child or servant is the effect of the passive negligence of a parent or master the offence may be murder. So also where it is the consequence of active severity in chastisement, it may be murder or manslaughter, according to the indiscretion in the choice of the instrument used, the extent of the punishment, and the circumstances under which it is administered. The report explicitly negatives all presumptions of express malice. His right to correct the child cannot be contested; the instruments used were not unlawful; the essential ingredient in the constitution of his offence arises then by implication of law, from the indiscreet exercise of his rights, the result of a violent temper. Had the death of the child arisen from a course of immoderate correction, accompanied with intervals of calmness from subsiding passion, it would have evinced that general

[a] Const. 1777, § 18.

depravity which warrants the inference of malice. But where the passions are excited, and kept in an uninterrupted agitation, such is the benign tenderness of the law to human frailty that a homicide committed in this state of mind, though a felony, is not murder but manslaughter. Which of these offences the convict has been guilty of, is for you to decide.[6] When you shall have this subject under consideration, permit me to direct your attention to the sixth enacting clause of the act entitled "an act concerning murder." Its terms are "that upon all indictments for the death of any person, if it be found by verdict that the party indicted happened to kill the person for whose death he is indicted, in lawfully chastising or correcting his child or servant, the party so indicted, &c. shall not forfeit or lose anything for the death of the same person so killed, but shall thereof and for the same, be fully acquitted and discharged." This clause has never to my knowledge, received a judicial construction. Should it be contended that it is applicable only to cases where the correction is lawful in all its particulars, it is useless, for such cases were not punishable at common law. May it not be intended as a protection against the efforts of indiscretion? I presume not to give an opinion. It would be travelling out of the line of my duty.

At the last session I recommended to the consideration of the legislature the propriety of an alteration in the criminal code, which should make a distinction between the cases of actual and implied murder. The subject was committed, and the attorney general, who was charged with it, approved the plan and determined to report by bill. His

[6] The Legislature, by chap. 170, passed April 7, 1806, suspended the execution of Arnold until the first Tuesday (3d) of March, 1807. On the Governor's suggestion as to passive negligence, see People v. Pierson, 176 N. Y. 201. The execution of Arnold was further suspended by chap. 18, passed February 27, 1807, and by chap. 56, passed March 21st, the punishment of death was changed to imprisonment in the State Prison at hard labor for life.

time being much occupied, I engaged to draw the bill for him; but really I could not find leisure to comply with my engagement. I therefore consider the subject as still under legislative consideration, and this was an additional motive for referring the case of Arnold to you. I must add also, as a further inducement, the application of a number of inhabitants of the county of Otsego, for a six weeks respite of this unfortunate man. It was too respectable not to claim attention, and could in no way be constitutionally complied with but by suspending the execution till the meeting of the legislature. Some letters respecting his case will be laid before you, on which I shall only remark that Mr. Peck, I understand, was one of his judges, and Mr. Phinney foreman of the grand jury who found the bill on which he was convicted.

I cannot dismiss this subject, gentlemen, without remarking the great impropriety of the discussion it has undergone, in some of the public prints. A discussion calculated to pollute the streams of justice, and to prevent an impartial decision on a question involving the life of a citizen. Confident it has failed to produce on your minds the effect intended, I am satisfied it will not have an influence on the fate of the convict.

The other case is that of David Williams, convicted in the county of Cayuga. The report and documents accompanying it will be laid before you, and will furnish every necessary information. The single question is as to the sanity of the man.[7]

Application was made to the legislature at their last session by a gentleman in the city of New York, for aid in the

[7] By chap. 12, passed February 17, 1806, the execution of David Williams was suspended until thirty days after the first day of the next annual meeting of the Legislature. The execution of Williams was further suspended by chap. 15, passed February 21, 1807, and by chap. 46, passed March 20, the execution was again suspended until the first day of January, 1817. Chap. 70, passed April 5, 1816, changed the punishment of Williams to imprisonment for life at hard labor.

support of a Botanic garden, which he had recently established. At the request of some of the members, I, in the course of the last summer, paid it two visits, and am so satisfied with the plan and arrangements, that I cannot but believe, if not permitted to languish, it will be productive of great general utility. The objects of the proprietor are, a collection of the indigenous, and the introduction of exotic plants, shrubs, &c and by an intercourse with similar establishments, which are arising in the eastern and southern states, to inure the useful and ornamental products of southern and northern and of northern and southern climes. In the article of grasses, I was pleased to see a collection of one hundred and fifty different kinds. A portion of ground is allotted to agricultural experiments, which cannot but be beneficial to an agricultural people. When it is considered that this branch of natural history embraces all the individuals of the vegetable which afford subsistence to the animal world, compose a large portion of the medicines used in the practice of physic, and many of the ingredients essential to the useful arts, its utility and importance is not to be questioned. But in a country young as ours, the experimental sciences cannot be expected to arrive at any degree of excellence, without the patronage and bounty of government; for individual fortune is not adequate to the task.[8]

Among the various objects to which I have thought it necessary to call your attention, none certainly claim a

[8] The Senate committee which considered the part of the Governor's speech relative to the proposed botanic garden, presented a report reciting the service rendered by the memorialist, David Hosack, as a lecturer on botany in Columbia College, without compensation, and recommended an annual appropriation to enable him to continue such instruction. A bill for this purpose was introduced, but no law was passed until 1810, when, by chap. 50, passed March 12, the Commissioner of the Land Office were authorized to purchase the botanic garden at Elgin near the city of New York established by David Hosack, and a lottery was instituted for the purpose of raising the needed funds.

preference to those connected with the general defence; they will probably, therefore, be first considered. That a spirit of harmony and union, gentlemen, which the circumstances of our country at no period have more loudly called for, may preside in your councils, and that every minor consideration may give place to an ardent desire to promote the public good, is the fervent wish of my heart, and shall be the constant object of my unremitted exertion.

MORGAN LEWIS.

Albany, January 28, 1806.

SPECIAL MESSAGES.

January 28. To the Senate:

Objections by the Council of Revision to a bill passed at the last session "authorizing Zilpha Smith to convey by deed the title to certain lots of land."

"1st. Because, it is reasonably to be intended, although the bill is silent as to the facts which induced legislative interposition, that by reason of the descent to infants there has arisen embarrassments in conveying a legal title to the lands contracted to be sold by Cornelius Chatfield, deceased; notwithstanding which, there is no manner of provision in relation to the consideration money for which the said lands were contracted to be sold; nor does it appear that the rights of the infants, have in any manner been adverted to; particularly as regards the omission in the bill to require security to be given by the said Zilpha Smith, faithfully to execute the authority vested in her.

2d. Because, it appears by the said bill, that the contract intended to be carried into effect, was made between the said Cornelius Chatfield, deceased, and Nathan Daniels, Nathan Smith, Roswell Buell, Benjamin Stephens and Zena Stephens; and the said bill authorizes the widow of the said Chatfield, to execute a conveyance to William and

Samuel Smith, without its appearing in the bill that they have acquired a right to exact a performance of the contract.

3d. Because, in all cases where there is a remedy in a court of equity to compel the specific performance of a contract, legislative aid ought not to be interposed, but under very special and peculiar circumstances, clearly stated in the bill; and then only it ought to be afforded under the direction and with the approbation of that court possessing the jurisdiction to afford relief, to the end that the rights of individuals may not be affected by special acts, of the passage of which they may have had no notice, nor be competent to oppose."

The bill was not passed over the veto.

January 28. To the Assembly:

Objections by the Council of Revision to a bill passed at the last session "relative to dower in certain cases therein mentioned." [9]

"1st. Because, it enacts that no widow whose husband being now alive, and who was convicted and attainted by or under the act therein mentioned and which act was passed the 22d day of October, 1779, shall be endowed of any lands whereof her husband was seized at the time of such conviction, or at any time before. This provision takes away a right or title which, by the law of the land, the wife acquired at the time of her marriage, and which continues indefeasible, unless she be divested of it by her own act or consent. To take away that right by an act of the legislature, even before it be consummated by the death of the husband, is to take away a legal right already at-

[9] The dower bill was passed over the veto, and became a law, chap. 17, on the 20th of February, 1806.

tached and vested. The bill is therefore a violation of the rights of property and contrary to the spirit of the constitution.[b]

2d. Because, the bill applies only to the widows of certain persons who were objects of prosecution and punishment during our revolutionary war, and creates a new rule of property without making it impartial in its object, and general in its application. If those widows are selected as peculiar objects of the bill by reason of any crimes of which their husbands were convicted under the act aforesaid, the bill is unjust, because it is retrospective in its nature, and creates disabilities arising from crimes after they have been once tried and punished; and it is unlawful because it is contrary to the constitution of the United States which prohibits the passing of any *ex post facto* law,[c] and because it inflicts new punishment for acts committed during the late war, contrary to the spirit and letter of the treaty of peace."

January 28. To the Assembly:

Objections by the Council of Revision to a bill passed at the last session "for the relief of Mary Reynolds, administratrix of Andrew Reynolds, deceased."[10]

"1st. Because it is manifest, from the provisions in the bill, that Mary Reynolds, who is thereby authorized to convey the land therein mentioned, is not seized thereof, but that the same hath been devised or descended to other persons, who, for anything appearing in the said bill, may be of legal capacity to execute the conveyance therefor. If the heirs or devisees are not in law competent thereto, then

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[b] Const. 1777, § 13; U. S. Const. art. 2, § 10, clause 1.

[c] U. S. Const. art. 1, § 9, clause 3.

[10] The Reynolds bill was not passed over the veto, but another act, chap. 106, passed April 2, authorized the disposition of the Reynolds property under the direction of the Court of Chancery as suggested in the veto.

there is a want of provision in protecting and granting the rights of persons laboring under disabilities, particularly as regards the omission in the bill to require security to be given by the said Mary Reynolds to execute the authority vested in her faithfully, and to account for the monies to be received by her.

2d. Because in all cases where there is a remedy in a Court of Equity to compel the specific performance of a contract, legislative interposition ought to be had only under very special and peculiar circumstances clearly stated, and then only under the direction of that court originally possessed of jurisdiction, to the end, that the rights of third persons may not be impaired, as it appears by the present bill they might.

3d. Because by the third section of the said bill provision is made for the payment of a debt due to William Cockburn, thereby giving him a preference to other creditors, which it does not appear he legally possesses."

January 28. To the Assembly:

Objections by the Council of Revision to a bill passed at the last session, "supplementary to the act, entitled 'An act declaring the crimes punishable with death, or with imprisonment in the state prison, and for other purposes.'"

"1st. Because the second section directs the punishment of certain classes of convicts, with death and dissection, for a mere escape, unattended with personal injury or violence to any individual — thus subjecting an effort, prompted by the love of liberty, which furnishes no evidence of moral turpitude or incorrigible depravity, to the most terrific sanction found in the criminal code of this state — applying the maximum of punishment to an offence much inferior in atrocity to that for which the imprisonment was originally incurred, and destroying the relative proportion between crime and punishment, by blending in

an indiscriminate class the convict who merely attempts to elude the justice of the law, and the murderer, whose malignity the safety of the community may require should be pronounced unworthy to live.

2d. Because the fourth section does not distinguish between the setting fire to a dwelling house, by which life as well as property may be endangered, and the burning an out house only, and yet a variety of circumstances unavoidably occurring may create a great disparity in the crimes.

3d. Because the punishment of death, authorized by the said fourth section, could not fail of being unfavorable to the conviction of real offenders; experience having evinced, that when the punishment is disproportioned to the offence or extends to the deprivation of life, sympathy has a powerful effect not only on the minds of the triors, but also on the public at large; in this point of view this provision defeats itself.

4th. Because, by the fifth section of the bill, the punishment of whipping is authorized for petit larcenies, a mode of punishment, extirpating a future sense of shame, and eminently calculated to render the offenders obdurate and incorrigible, to the great hazard of public peace and good order."

The bill was not passed over the veto.

January 28. To the Assembly:

Objections by the Council of Revision to a bill passed at the last session "for incorporating the Newburgh Aqueduct Association, and for other purposes." [11]

"1st. Because by the fourth section of the bill, the corporation are authorized to enter upon any lands they may deem necessary, and to appropriate the same together with

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[11] The Newburgh aqueduct bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chap. 36, on the 7th of March.

any fountain or stream of water and the mills thereon, and to raise such dykes and reservoirs as they shall deem fit for the purpose of procuring and conducting water to the said village of Newburgh; and to agree with the owners of such lands and mills respecting a compensation for the same, and in case of disagreement another mode of ascertaining the damages is pointed out, and upon tender of payment the said corporation are to be deemed seized of all such lands, streams and mills, which they shall have taken possession of for the purposes aforesaid. The power hereby conveyed is unlimited, and the object of the bill does not appear to be of such great public utility as to render the grant of it expedient. To deprive individuals, without their consent, not only of their lands but of the buildings and other valuable improvements thereon, can be justified only on the principle of some important public object.[d]

2d. Because, admitting the object to be attained would justify the grant of the power, the provision in the fourth section for ascertaining the damages is nugatory and incapable of execution, and consequently would defeat the object of the bill. It states that if the parties cannot agree upon the amount of the damages, or in case the owner be a *feme covert,* under age, *non compos,* or out of the state, then each party is to choose a disinterested person for the purpose, and a judge of the court of common pleas to be selected by the parties is to choose the third arbitrator. This provision need only be stated to show it incapable of execution, and there is no other provision in the bill by which it can be supplied."

January 31. To the Senate:

"GENTLEMEN.— You will receive herewith a copy of a resolution of the legislature of the state of Vermont, pro-

[d] Const. 1777, § 13; 1894, art. 1, § 6; U. S. Const. 5th Am.

posing an amendment to the federal constitution.[12] Also the annual return of the Commissary of Military Stores, together with a letter from the custom house of New York, containing propositions on the part of the United States for erecting a beacon on Staten Island.[13]

MORGAN LEWIS."

Albany, 31st January, 1806.

February 1. To the Assembly: Transmitting a letter from the resident physician in the city of New York relative to the epidemic which had prevailed in that city in recent years. (See note 3.)

February 4. To the Assembly:

"GENTLEMEN.— You will receive herewith a copy of resolutions of the two houses of the Legislature of the state of Georgia, together with a letter of Gov. Milledge, requesting me to lay them before you.[14]

I also transmit to you a speech of the chiefs and warriors of the Onondaga nation. I have reason to believe some of their complaints are well founded, particularly those which relate to trespasses on their national rights. I was in their neighborhood not long since, and received information from several of the inhabitants, corresponding with their statement. I was assured that they had become sober and industrious, and deserving the attention of government. The

12 The Vermont resolution recommended an amendment to the federal constitution, authorizing Congress to prohibit the importation of slaves.

13 Chap. 6, passed February 17, ceded to the United States land for a beacon in the southeast part of Staten Island.

14 The Georgia resolutions considered three proposed amendments to the Federal Constitution: First, the Kentucky resolution restricting the jurisdiction of the Federal courts; this was approved. Second, the North Carolina resolution proposing to restrict the importation of slaves; the Georgia resolution expressed the opinion that under the existing Constitution such an amendment could not be made prior to 1808. Third, the Massachusetts resolution, proposing an amendment changing the basis of representation in Congress; this was disapproved.

chiefs waited on me in a body, and expressed a wish that the Legislature would pass an act empowering some person to prosecute suits for them for violations of their individual or national rights.[15]

MORGAN LEWIS."

Albany, February 4, 1806.

February 5. Thanking the Senate for its address, the Governor said:

"GENTLEMEN.—The confidence you place in the wisdom and patriotism of the president and congress of the United States, is worthy of the republican character you justly bear; and the hope expressed that as guardians of the common defence and general welfare, they will perform the duties assigned them, I accept as the pledge of a determination on your part to merit a reciprocity of confidence by an honorable compliance with every just engagement, and an energetic exertion of those means which Heaven has bountifully placed within our reach, for the protection of the national prosperity and happiness.

Measures resulting from a combination of harmony and wisdom, cannot fail to produce effects which shall swell the bosom of every virtuous citizen with emotions of gratitude, to that divine fountain of goodness, from whence all earthly blessings flow.

MORGAN LEWIS."

Albany, February 5th, 1806.

February 7. Thanking the Assembly for its address, the Governor said:

"GENTLEMEN.—The impression which the delicate posture of our national affairs has made on your minds, justifies the expectation I had formed. Indeed, it is a subject

[15] Chap. 161, passed April 7, authorized the appointment of an attorney for the Onondaga Indians.

on which there can be but one sentiment. That evils threaten us is not to be denied. That it is a duty we owe ourselves to avert them, if possible, is equally manifest. The means however, to be resorted to for the attainment of an end so desirable, must be expected to produce a variety of opinion. While you concur with me in the belief that the defence of our chief city is a matter of the highest concern, I unequivocally accord to the sentiment, that our rights, our honor, and all that is most dear to us as a people, are safely confided to the administrators of our general government, who will adopt such wise measures for their protection, as shall, with the divine assistance, insure the desired effect. But, should the unexpended residue of a former appropriation, the payment of which was assumed by the state, be considered as forming an indispensable part of any future provision which may be made by Congress, for the fortification of our principal harbor, I have a confidence, that you will not permit the remembrance of even real injuries sustained in the adjustment of former state balances, or a too rigid economy, to induce a conduct that may impeach our faith, or hazard our security.

The disposition you show of furnishing our militia with efficient means for the defence of our country, and rendering them otherwise respectable, must be gratifying to the sincere friends of freedom, for it promises protection against foreign invasions, without danger to civil liberty."

February 21. To the Senate:

"GENTLEMEN.—You will herewith receive a report of the trial of Francisco Son, convicted of murder at a late Oyer and Terminer, held in and for the city and county of New York, together with some remarks by his counsel on the testimony. The Legislature being in session, in my opinion, suspends the powers of the executive, and vests

the right of exercising the prerogative of pardon immediately in the two houses. The 28th day of March, is the day assigned for its execution.[16]

I also transmit a letter and accompanying documents, just received from the commissary of military stores, relative to the ground applied for by the United States, for the erection of a beacon on Staten Island. [See note 13.]

MORGAN LEWIS."

Albany, February 21st, 1806.

March 6. To the Senate: Transmitting a resolution adopted by the Legislature of Tennessee proposing an amendment to the federal constitution prohibiting the further importation of slaves.[17]

April 2. To the Assembly:

Objections by the Council of Revision to a bill "relative to certain crimes therein mentioned."

"1st. Because, by the second section of the said bill, the punishment of death is authorized for an assault with intent to murder, and with intent to escape, upon either of the inspectors, the agent, the principal or deputy keeper, or any person permitted to visit the state prison, committed by any person who now is or shall be convicted of any crime for which he has been or shall be sentenced to imprisonment at hard labor for life in the state prison; and thus, for the mere intention to commit a crime, a punishment of the most terrific kind is to be inflicted, when by the 7th section of the act, entitled 'An act relative to the State Prison,' full power is given to the principal keeper and any two of the inspectors, to punish all con-

[16] Both houses adopted resolutions declining to take any action in relation to the case of Francisco Son.

[17] The Assembly adopted a resolution declaring it inexpedient to concur in the Tennessee resolution relative to the importation of slaves.

victs for assaults, by confinement in the solitary cells of the said prison, on bread and water only, for such term as they shall judge proper and necessary; a species of punishment sufficiently severe, and well adapted to break down the spirit of the most refractory.

2d. Because the great object in instituting the state prison, at an enormous expense, was to ameliorate our criminal code, by justly apportioning punishments to offences; that by rendering them less sanguinary, convictions might inevitably ensue on criminality; this object will be wholly defeated, if the second section of the bill passes into a law, and our code will lose the mildness of its character, and become more sanguinary than the old system itself.

3d. Because, since the establishment of a guard, maintained at the public expense, the inducements to commit assaults on the keepers, for the purpose of escaping, have been in a great measure taken away, and there exists no public necessity to give this sanguinary feature to our criminal laws.

4th. Because the 3d section of the bill punishes the same offence, when committed by persons imprisoned for a term of years, in a far different manner, and creates a distinction in punishment with reference only to the person of the offender; a discrimination in many cases wholly unfounded, for in point of moral turpitude the forging an order for the payment of money is not greater than a larceny to the same amount; and although the punishment for these offences are different, it is not on account of greater depravity, but as respects the effects on society.

5th. Because, by the 4th section of the bill, death is to be inflicted for the wilful and malicious burning of a barn, or a grist-mill, and thus for the mere destruction of property, without any hazard to the lives of individuals, the principle heretofore exploded is revived, and a precedent

is established which would warrant the infliction of death for any deprivation of property.

6th. Because, by the 6th section of the bill, the punishment of whipping is authorized, a punishment eminently calculated to eradicate all future sense of shame, and to render its object wholly incorrigible."

The bill was not passed over the veto.

April 4. To the Senate:

Objections by the Council of Revision to a bill "granting to John R. Hollenbeck, and such other persons as with him shall associate, the privilege of laying out and constructing a free road."

"1st. Because by the general statute of the state, entitled 'An act to regulate highways,' full and ample provision is made for laying out all necessary public or private roads in ordinary cases, and public policy requires that all laws relating to the same subject, and the mode of obtaining redress, should be as general and uniform as the nature of cases will admit. It is therefore inconsistent with the public good, and forming a precedent that may be dangerous in its consequences, to legislate on individual cases, where the existing law is fully adequate for relief, if any ought to be afforded.

2d. Because by the first section of the bill, power is given to the persons to be appointed to lay out the road, to lay out the same in such place, as they shall judge best and most convenient, without acting under the solemnity of an oath, or being under the salutary restriction contained in the general law regulating highways, which prohibits any road from being laid out through gardens and orchards, without the consent of the owner, thereby giving to the persons so to be appointed, unusual and extraordinary powers, without any reason whatever appearing for the same.

3d. Because by the second section of the bill, the persons to be appointed to lay out the roads, are to assess the value of the lands and damages of the respective owners and occupants through which the same shall be laid, without acting under the obligation of an oath.

4th. Because by the third section of the bill, the road to be laid out is to be considered and used as a public highway without any necessity for the same appearing; whereas by the general laws no road can be laid out through improved lands without the application of twelve reputable freeholders of the town in which such road shall be laid out, certifying upon oath that such road is necessary and proper, which is a wise and prudent precaution against the laying out unnecessary roads."

The bill was not passed over the veto.

April 4. To the Assembly:

Objections by the Council of Revision to a bill "to regulate highways in relation to certain towns in the county of Westchester."

"1st. Because the bill is unequal and partial, for it requires non-resident proprietors of lands in certain towns in the county of Westchester to work on the highways in those towns, when the same duty is not required of non-resident proprietors in any other part of the State adjoining a neighboring state.

2d. Because the bill makes it lawful to assess all persons who possess lands in the said towns, and who reside in the state of Connecticut, to work on the highways in the said towns; to warn all such persons to appear and work, and in case of neglect or refusal on the part of such persons, they are made liable to the usual fines and penalties for such default. The bill is therefore either nugatory, and calculated to defeat itself, or it makes it the duty of the overseers to enter into the state of Connecticut to give

such warning, for the warning required by law is a personal notice, or one left at the dwelling house of the party; and to authorize such an entry is unlawful, and an invasion of the jurisdiction of Connecticut.

3d. Because the bill provides that the fines and penalties incurred by such persons for default of appearing and working shall be recovered in the same manner as is directed by the act, entitled 'An act to regulate highways,' and that act provides that the penalties shall be levied by distress and sale of the goods and chattels of the party, under a warrant directed to the constable of the town where the delinquent resides. The bill therefore is incapable of execution.

4th. Because the duty of working on the highways is a personal service, and is not made a lien or charge upon land, and to exact any service or levy any assessment upon persons not resident within this state, otherwise than by making the same a lien upon the land, is an assumption of jurisdiction which cannot and ought not to be exercised."

The bill was not passed over the veto.

April 4. To the Assembly:

Objections by the Council of Revision to a bill "to amend an act entitled 'An act appointing commissioners for the inspection of turnpike roads.'" [18]

"Because the second section of the bill authorizes the said commissioners or a majority of them, to order any toll-gate or any turnpike road within their county, which they shall judge out of repair, to be opened; and it prescribes an effectual penalty for a neglect or refusal to obey such order. The bill affords no guide or limitation to the judgment of the commissioners, nor any opportunity to the proprietors of the turnpike road to be heard, nor

[18] The turnpike bill was passed over the veto, and became a law, chap. 160, on the 7th of April.

is any mode prescribed. The order of the commissioners is to be peremptory in the first instance, and requires instantaneous obedience. The bill therefore vests in these commissioners an arbitrary power over the interest and property of individuals, which is unknown to the constitution, and if carried into effect, would become in a high degree injurious and alarming; for the rights vested in the stockholders of a turnpike company, incorporated by law, are as sacred and as much entitled to protection, as any other private rights, and the stockholders cannot be constitutionally deprived of them, by the mere allegation of a forfeiture without a trial and conviction of such forfeiture in the ordinary course of justice."[e]

April 4. To the Assembly:

Objections by the Council of Revision to a bill "to amend an act entitled 'An act for the more speedy recovery of debts to the value of $25, and for other purposes.'"

"1st. Because by the first section of the bill, without any other evidence than the oath of the party plaintiff, that the defendant has departed or is about to depart from any city or county (New York excepted) or is secreted within the same, with intent to defraud any of his creditors or to avoid being served with the ordinary process of law; justices of the peace are authorized to issue an attachment against the goods and chattels of such defendant, thereby authorizing and requiring the constable to whom it shall be directed, to take into his custody the goods and chattels to answer the judgment and costs, if any shall be obtained, unless security be given for the delivery of the same at the time of issuing execution on such judgment. The powers hereby vested in a creditor are too dangerous and unguarded, and may be converted to the purposes of vexation and oppression, he being authorized

[e] Const. 1777, § 13, U. S. Const. art. 1, § 10, clause 1; see also 14th Am.

to attach the goods and chattels of his debtor to an indefinite amount, to answer the most trifling and inconsiderable demand.

2d. Because the security required of the defendant in order to retain the possession of his goods and chattels after service of the attachment, is in the nature of bail; and by the operation of the said first section of the bill, security to an unlimited amount may be required for the least possible demand, which would virtually be an infringement of the eighth article contained in the statute concerning the rights of the citizens of this State, which declares that excessive bail ought not to be required."

The bill was not passed over the veto.

April 5. To the Assembly: Transmitting the annual return of the militia of this state.

April 7. The Legislature adjourned without day.

1807. JANUARY. LEGISLATURE, THIRTIETH SESSION.

MORGAN LEWIS, Governor.

The Legislature met the 27th of January, when the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.— In looking back on the events of the past year, we find abundant cause for gratitude and mutual felicitation. Our commercial cities in the whole extent of the continent, have been exempted from the scourge of that malignant disease which has so frequently depopulated them, and interrupted their commerce. Our country has progressed in wealth and

strength with a rapidity unparalleled. Our exterior relations have assumed a brighter aspect, since the just and pacific disposition of our government has placed our differences with foreign powers in a train for amicable adjustment. Our public debt has been greatly diminished. Our burthens are scarcely perceptible, and a general prosperity rewards the various exertions of our citizens. Such a state of things evinces the blessing of heaven on a wise administration of our national concerns.

In this general dispensation of benefits, our state has merited and received an unrivalled portion. In the course of a few years, she has outstripped her confederates, in those important sources of national greatness, agriculture and commerce, and is not behind the foremost of them in improvements in the useful and fine arts. The first of these assertions is supported by a comparison of exports from the city of New York, with those from the city of Philadelphia, during the short period of five or six years, which affords an unerring criterion, and establishes this important fact, that while each has experienced a rapid increase, the former which, at the commencement of the period, was far behind, has previous to its termination, overtaken and gone far ahead of the latter. To explain: in the year 1800, the exports from Philadelphia stood in a ratio to those of New York of about seven to six; at the close of 1805, those of New York were to those of Philadelphia as twelve to seven nearly. Whence, it is natural to inquire, proceed these results, which are the more remarkable, as Philadelphia has preserved her superiority in population, having considerably upwards of an hundred thousand inhabitants, while New York has little more than seventy. The question is one which merits the examination of an enlightened people, and the solution of it, if I mistake not, will be found in our spirited exertions in the improvement of roads and navigable streams. These have facilitated an intercourse between our sea ports and interior

country, have taught the forests to bow beneath the labors of the husbandman; have converted the wilderness into fruitful fields, and have made the desert places rejoice and blossom as the rose. Similar causes have produced similar effects in Great Britain, a country unequalled in agriculture, arts, manufactures and commerce. It is little more than fifty years since her attention was earnestly turned to the facilities of internal intercourse; from that period her exports have been progressing and have nearly attained to an increase of four hundred per cent, while that of her population has not exceeded ten. A wise government will not fail to improve such advantages.

In the discharge of those duties, gentlemen, imposed by the constitution on the executive at the opening of every session of the legislature, I have little information to give you, and but few subjects to recommend to your deliberation, but such as have on former occasions been submitted. The leading points of republican policy which, under our form of government, ever must have the strongest claims to national consideration, are the encouragement of agriculture and the useful arts, the diffusion of knowledge by institutions for the promotion of education, the advancement of public justice, and the efficiency of the national force. To these objects we have at no time merited the reproach of being indifferent. Great and honorable exertions have been made; much however still remains to be done, which we have the ability to do.

A society has been instituted by the legislature for the promotion of agriculture and useful arts. But it has ever been so straightened in its pecuniary means, as greatly to circumscribe its utility. Very moderate legislative assistance would enable it to institute a course of agricultural experiments which would be highly beneficial to the community. It might teach us the art of increasing the product of labor; of improving the breeds of the useful domestic animals, and the quality of such crude materials as are used

in our infant manufactures, and are derived from our own soils, and our own flocks. European nations are eminently indebted for their progress in these particulars to the liberal support of similar institutions.

The act of the 2d of April, 1805, entitled "an act to raise a fund for the encouragement of common schools," contains an authority to the comptroller to loan the interest annually arising from the fund thereby established, for the purpose of a cumulative increase of capital to a certain extent: I submit to the legislature the propriety of a similar provision as to the dividends on the stock held by the state in the Merchants' Bank, and the interest on the loans made under the 14th section of the supply bill for the year 1803, the principal or capital in these latter cases, having been appropriated by the legislature to the same wise and benevolent purpose, as in the former. The inducement to this measure is, the slow progress of the first mentioned fund, which without aids, will not benefit the rising generation of the present day, whatever it may do for those which shall follow.[1]

In inviting your attention to the subject of public justice, I cannot refrain from again urging the propriety of a revision of the criminal code, that the degrees of punishment may be more accurately proportioned to the comparative magnitude of offences. That the value of a cent should warrant the difference between three and fourteen years imprisonment in the case of larceny, or that he who alters a receipt for a few shillings, or knowingly passes a piece of false coin of the lowest denomination, which he has honestly received, should be punished as severely as he who counterfeits the currency of the country, and thereby impairs the confidence of the community in the general

[1] The Governor's suggestions concerning the common school fund were included in chap. 32, passed March 13, relative to investments for the benefit of that fund.

medium of commercial transactions, are certainly defects in the system of criminal jurisprudence, which require a remedy. Instances of some of the latter cases I understand, actually exist at this moment. Let it not be said the executive has the power to mitigate the severity of punishment in such cases. The prerogative to pardon vested by the constitution[a] can be only exercised righteously under a discretion strictly legal or in cases very peculiarly circumstanced, and cannot with propriety pronounce the sanction of the law unjust.

Repeated applications have been made to me by respectable citizens, on the subject of the act, entitled "an act for establishing courts of justices of the peace in and for the city of New York," which notwithstanding the amendments made last winter, still continues to excite much uneasiness. The principal ground of complaint is the expense and delay attending prosecutions in those courts. A delay of justice is, to the poor man, emphatically a denial of justice, particularly in large and populous cities, where the loss of a day's labor, is frequently the loss of a day's subsistence to a worthy family. This class of citizens, therefore, ought never to be subjected to a fruitless attendance on courts, nor to the hazard of expenses, which shall deter them from prosecuting their rights. As far as the grievances complained of proceed from defects in the organization, jurisprudence or administration of these inferior tribunals, redress will be found, I trust, in the wisdom and policy of the legislature.

I should consider myself, gentlemen, manifestly deficient in the discharge of my duty were I to relax my exertions to impress on your minds a conviction of the propriety of greater attention to the state of the national force than has yet been bestowed on it. If we are sincere in the belief that standing armies are hostile to liberty and economy,

[a] Const. 1777, § 18.

and mean to avoid the necessity of employing them by entrusting the national defence to the militia of the country, that militia should certainly be rendered as efficient as possible. It requires no argument to convince the reflective mind, that in the present improved state of military tactics, numbers alone give not national strength; and that well appointed and well disciplined invading armies, when opposed by ill provided irregulars only, spread desolation, inflict calamity, and achieve conquest with little difficulty. Even the generous love of country and the public good which republics ought to cherish, and which nerves the patriot's arm, when encountering the enemies of his native soil, is then but the sad mean of swelling the dire catalogue of human misery. This is not a picture of the imagination, it is drawn from real life, and I forewarn you in time, gentlemen, that it may not be realized in our own country. I have been an eye witness to the state of the militia; I have personally inspected nearly the whole, and I can with truth assert to you, that they have not, as I verily believe, of such arms as a soldier ought to have, and as our law requires, a musket to every tenth man, nor a bayonet to every twentieth; many are destitute of arms of every description, and appear on parade shouldering a staff in place of a firelock; nor is the fault imputable to them; arms they cannot procure, and it is the duty of the government to furnish them. I say the duty, because I am warranted in saying so, both by the intrinsic nature of the thing, and the constitution of our country. The fortieth article of the constitution ordains, that the militia of the state shall, at all times, as well in peace as in war be armed, disciplined and ready for service; and that a proper magazine of warlike stores, proportionate to the number of inhabitants, shall be forever thereafter, at the expense of the state, and by acts of the legislature, established, maintained and continued in every county in the state. An injunction so solemn, cannot, consistent with duty, be dis-

regarded. Nor is the deficiency in arms greater than that in colors and martial music; many regiments are totally destitute of the former and very ill provided with the latter. So great is the deficiency in this last particular, that, with the exception of the city of New York, there can scarcely be collected, throughout the state, a dozen drummers capable of distinguishing a retreat from a charge. If the legislature should entertain doubts as to the importance of having in the militia, musicians skilled in the various branches of military music, I would recommend to their perusal the act of congress of the 3d of March, 1803, for the organization of the militia of the district of Columbia. They will find it there considered of sufficient magnitude to justify the holding out considerable inducements to engagements in that service. I have found everywhere a laudable military ardor, an emulation to excel in military discipline and knowledge, which, if promptly encouraged and united with a just confidence in our own strength, may bid defiance to foreign aggression; to inspire that confidence is completely in the power of government.[2]

An exemplification of an act of the legislature of the state of New Jersey will be laid before you, from which it will appear that some controversy has arisen as to the limits of the territorial and jurisdictional rights of that state and this. An equitable and amicable mode of adjustment, by a reference to commissioners is proposed, which I presume will be acceded to.[3]

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[2] By chap. 71, passed March 27, the Governor was authorized to organize a third regiment of artillery in the first brigade, and chap. 118, passed April 3, provided for the erection of a powder magazine in the city of New York.

[3] Commissioners on the New Jersey boundary were appointed by chap. 113, passed April 3.

To render your session, gentlemen, agreeable to yourselves, and beneficial to our country, nothing on my part shall be wanting.

MORGAN LEWIS.

Albany, January 27, 1807.

SPECIAL MESSAGES.

January 27. To the Senate:

Objections by the Council of Revision to a bill passed at the last session "relative to the punishment of certain crimes."

"1st. Because by the 2nd section of the bill, the infliction of the punishment of whipping is authorized which instead of operating as a corrective is calculated to degrade offenders, and by destroying their sense of shame rendering them incorrigible.

2d. Because the power of adjudging an offender to be whipped, is by the bill, vested in a special session, which proceed without the intervention of a jury, and from that circumstance as well as from the organization of those courts is peculiarly exposed to be abused and wrested to oppressive purposes.

3d. Because the fourth section of the said bill does not distinguish between the setting fire to a dwelling house, by which life as well as property may be endangered, and the burning an out-house, and yet a variety of circumstances unavoidably occurring may create a great disparity in the crimes, and then death, the most terrific sanction in the criminal code, may be legally inflicted for offences, not jeopardizing or affecting the life of individuals, whereby the relative proportion between crimes and punishments will be destroyed."

The bill was not passed over the veto.

January 27. To the Assembly:

Objections by the Council of Revision to a bill passed at the last session "to amend an act entitled 'An act relative to unappropriated and forfeited lands, and for other purposes.'"

"Because, by the 5th section of the bill, the attorney general is authorized in all cases of mortgages given to the People of this State, or to any other person, and the interest therein hath become vested in the State by assignment, attainder or otherwise, to foreclose the equity of judgment in the same, by the simple process of advertising the lands for sale, for six months, in one of the public newspapers printed in this State, and on the outward door of the court house of the county where the premises lie, and that every sale, in pursuance of such notice is to be a bar to all claims on the part of the mortgagor or his representatives. A knowledge of this proceeding may or may not reach the party residing on or claiming the lands mortgaged, and there is no mode pointed out in the bill in which the proceedings may be arrested, and the truth of any valid matter in bar tried, and unless the defendant resorts to the aid of the court of chancery, he is placed entirely under the discretion of the attorney general. There are but few instances in which the law has authorized this mode of foreclosure by the act of the party—whereas the provision in the present bill is general and applicable to all cases in which the State is interested. It is therefore a dangerous mode of proceeding, and although it may suit the convenience of the public officer, it deprives the party in interest of that wise and excellent security of the common law, by which no person is to have his property taken from him, until by a personal notice or arrest he has been called to meet his adversary in a court of justice."[b]

The bill was not passed over the veto.

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[b] Const. 1777, § 13; 1894, art. 1, § 6; U. S. Const. 5th Am.

February 4. Thanking the Senate for its address.

February 11. In the course of his reply to the Assembly's address, the Governor said:

"In the honorable, tho' delicate post to which my countrymen have thought proper to call me, obliged to combat the prejudices of some, the jealousies of others, and the passions of all whom interest or ambition may excite, no virtue, no integrity can oppose an impenetrable shield to censure. If the most essential services and superior elevation of character, could not save the father of his country from reproach, even after the silent tomb had received the ashes of the illustrious chief — if mildness of manners and benevolence of heart, cannot protect the statesman and philosophic friend of man, the chief of our confederacy* from aspersion, it were vanity consummate in one far inferior to either to hope for universal approbation. It was not to be found in what I considered the straightway path, and I could not turn aside to seek it.

Sensible of my own imperfections, I am willing to believe I may have committed errors, but I had fondly hoped they were such, if any, as merited indulgence rather than asperity. Conscious that, to the extent of my ability, the public good has been the leading object of my political career; I have submitted to obloquy with no little resignation. The approving voice of the immediate representatives of my fellow citizens is, however, an ample recompence, and affords a gratification which can only be expressed in acknowledgments of your liberality and candor."

February 14. To the Senate:

"GENTLEMEN.—Some of the chiefs of the Cayuga Nation of Indians are at the seat of government, for the purpose

* Thomas Jefferson was President at this time.

of offering their reserved lands near Cayuga lake, for sale to the state. I have requested Messrs. L'Hommedieu and Tayler, two gentlemen of the Senate, conversant with Indian affairs, to have a conference with them on the subject. They have had such conference, and will be enabled to lay the result before the legislature. They will also communicate to the legislature some difficulties which have arisen in consequence of the lease made by the state of the ferry at Black Rock, in which certain rights reserved to the Seneca nation, have been unattended to.[4]

You will also receive herewith a letter addressed to me by the secretary of state, respecting some matters which claim your attention, and which are stated so much at large as to render any observations on my part unnecessary.

MORGAN LEWIS."

Albany, 13th February, 1807.

February 23. To the Senate: Transmitting the annual reports of the Commissary of Military Stores, and of the Governors of the New York Hospital.

February 23. To the Assembly: Transmitting a resolution adopted by the Maryland legislature, recommending an amendment to the federal constitution authorizing Congress to prohibit the importation of slaves; also a resolution from the New Jersey legislature disapproving the amendment to the federal Constitution proposed by

[4] The Legislature adopted a resolution authorizing the Governor to treat with the Indians for the purchase of their lands. His report appears in the special message of March 6. Chap. 72, passed March 27, appropriated $4,800 to pay for the land purchased. The same act authorized the Surveyor-General to lease the Black Rock ferry, by a contract, which, among other things, should provide that the Indians of the Seneca nation should be carried across the ferry free of expense as provided in the treaty. The same act made an appropriation to Jasper Parish for services as interpreter.

Pennsylvania, Kentucky, and Georgia to restrict the jurisdiction of the federal courts; also two resolutions from Kentucky, one asserting the fidelity of the State to the Union, and its support of the national administration, and the other seeking protection against excessive and unlawful taxation of its commerce on the Mississippi River.

March 2. To the Senate:

"GENTLEMEN.—I have the honor to transmit to you a resolution of the legislature of the State of Vermont, accompanied with astronomical observations, by an able mathematician, tending to show an error in running the boundary line between that State and the Province of Canada, which, by treaty with Great Britain, is the latitude of forty-five. An idea that a similar error may exist in the western extension of the line to the river St. Lawrence, is the inducement to an application to this state, to unite in a representation to the general government to have such error corrected, if it really does exist. To a correct understanding of this subject, it may be necessary to state, that the latitude of forty-five was accurately ascertained on Lake Champlain, in the year 1772, by commissioners appointed for the purpose, and lines run thence east to Connecticut River, and west to the St. Lawrence, intending to preserve the same parallel of latitude. The error, if any, must have arisen from the mode, or the instrument, used to ascertain the line. Previous to the legislature's uniting in the proposed application, I would submit the propriety of having the latitude of forty-five ascertained on the Iroquois or St. Lawrence River.

The annual return of the inspector-general of staves and heading also accompanies this communication.

MORGAN LEWIS."

Albany, March 2d, 1807.

March 6. To the Senate:

"GENTLEMEN.—Pursuant to the concurrent resolutions of the two houses, of the 16th ult. I have contracted with the Cayuga tribe of Indians for the purchase of their two reservations, amounting to three thousand two hundred acres of land, at one dollar and fifty cents per acre, to be paid them at Canandaigua, on delivery of the title deeds, duly executed by the persons authorized by the customs of their tribe, to sell their lands. Jasper Parish, Esquire, superintendent of Indian affairs having rendered considerable service in effecting said purchase, has been encouraged to expect from the bounty of the Legislature, a suitable compensation for such service. [See note 4.]

Certain chiefs of the Oneida nation are now at the seat of government, offering for sale about twenty thousand acres of their reserved lands; I wish the sense of the Legislature on this subject.[5]

MORGAN LEWIS."

March 11. To the Senate:

"GENTLEMEN.—In obedience to the concurrent resolutions of the 7th inst. I have agreed with the chiefs of the Oneida nation for the purchase of about fifteen thousand acres of their reserved lands. For the completion of the contract, an immediate appropriation of a sum not to exceed two thousand dollars is required, to be expended, under my direction, by the surveyor general in conjunction with Messrs. L'Hommedieu and Tayler. The re-

[5] A resolution was adopted authorizing the Governor to treat with the Oneida Indians for the purchase of twenty thousand acres of their land. The result of his negotiations appears in the special message of March 11th. Chap. 41, passed March 20, appropriated $2,000, a part of which not specified, was to be paid by the Governor to the Christian party of the Oneidas, as stipulated in the treaty negotiations. The expenses of completing the purchase were also to be paid from the same appropriation. Chap. 72, passed March 27, contained provisions relative to the disposition of the lands thus acquired from the Oneidas.

mainder of the consideration will be an annuity of about seven hundred dollars. Should the legislature wish any information respecting the disposition of the first mentioned sum, it will be confidentially communicated by the two last mentioned gentlemen. [See note 5.]

MORGAN LEWIS."

Albany, March 11, 1807.

March 30. To the Assembly:

"GENTLEMEN.—In obedience to the act, entitled 'An act for procuring ordnance and ammunition,' passed the last session, and appropriating for those objects, the sum of 62,000 dollars, I beg leave to report; that it will appear, from the accounts of the treasury, lying on your table, that I have drawn, at different periods, the sum of 30,000 dollars, of which the sum of 22,792 dollars 88 cents has been paid to the commissary of military stores, and by him disposed of, as per copy of acct currt. herewith transmitted. The balance, amounting to 7,207 dollars 12 cents, remains in my hands unexpended.

The impossibility of procuring ready made ordnance induced the necessity of purchasing the materials, and having them cast at the Georgetown foundry, conducted by Mr. Foxall, an experienced workman, who has long been employed in that business by the administration of the general government. The materials stated in the accompanying account are all that hitherto the commissary has been able to procure. The want of water through the last season, and the subsequent indisposition of Mr. Foxall, have, I understand, hitherto delayed the casting; but the work is now going on and will probably be soon completed.

The minister at war having offered to lend the state some pieces of heavy ordnance, I have thought it advisable to direct the materials hitherto procured, to be run

principally into field artillery; I have therefore as yet ordered only four heavy pieces, two medium twelves, and two twenty-fours.

Eight new carriages are completed, and timber is seasoning for the residue.

I have delayed contracting for shot until the pieces shall be completed, that mistakes in adjusting them with precision to the calibres may be avoided.

This report would have been presented at an earlier day, but I waited in expectation of receiving further information from Mr. Foxall.

The secretary of war demands of this State, 1000 stands of arms, borrowed of the United States, I think, in the year 1794. Of these, the commissary of military stores has collected from individuals 514, which have been repaired and put in complete order. An authority from the legislature, I presume, will be necessary for their delivery, as well as to enable him to recover such others of them as are still in the hands of individuals who refuse to surrender them. Provision will also be necessary for the supplying of any ultimate deficiency.

MORGAN LEWIS."

Albany, 26th March, 1807.

March 30. To the Assembly:

ALBANY, 28*th March*, 1807.

"GENTLEMEN.—I have the honor of transmitting you a letter from the chancellor, respecting the situation of the minutes of his court. The inconveniences complained of are stated at large, the remedy you are to decide on.

MORGAN LEWIS."

The letter from Chancellor Lansing stated the necessity of transcribing and arranging the records of the court of chancery for preservation and easy examination. The

Chancellor communicated the information that minutes of the court subsequent to the Revolution and prior to the year 1784 had been unaccountably lost, and that the records between the latter date and 1801 were quite imperfect and had been irregularly kept.

April 3. To the Legislature: Transmitting the annual report of the Regents of the University.

April 4. To the Senate:

Objections by the Council of Revision to a bill "relative to Columbia College in the city of New York."

"Because, by the fifth section of the bill, it is provided, that in case of the vacancy of the seat of any of the trustees of the said college, it shall be the duty of the trustees to state such vacancy to the regents of the university, and that it shall be the duty of the regents to appoint a proper person to supply the same. This provision is contrary to a privilege and immunity granted to the said college by its charter, of the thirty-first of October, 1754, which authorizes the trustees to fill up such vacancies, whenever the same should occur; and it appears by the representation of the trustees, referred to in the preamble to the said bill, that the said alteration is made without the consent of the corporation.

The right in question has received the repeated and explicit sanction of government, and it has thereby acquired all the security which any grant or chartered right can receive, under the constitution and law of the land. The charter declares, that all and singular the privileges and immunities thereby granted, shall be held by the governors or trustees of the said college, and their successors, forever. This charter, as well as all other charters and grants, made prior to the 14th of October, 1775, was, by the 36th article of the constitution of this state, saved from forfeiture, by reason of the revolution; and by the 8th and

9th sections of the act of the 13th April, 1787, entitled 'An act to institute a university in this State, and for other purposes,' the charter of the said college is fully and absolutely ratified and confirmed, and it is in a particular manner declared, that all vacancies in the said board of trustees shall be supplied in manner directed by the charter.

It is a sound principle in free governments, and one which has received frequent confirmation by the acts of the Legislature, that charters of incorporation, whether granted for private or local, or charitable or literary, or religious purposes, were not to be effected without process of law, or without the consent of the parties concerned; and although it were to be admitted, that legislative interference would be justified by some strong public necessity, to which all chartered privileges may be deemed subservient, no such necessity is presumed to exist in the present case.

The vacancies among the trustees of Columbia College have hitherto been supplied in the mode pointed out by the charter, by a succession of virtuous and learned men under whose care, as it would appear from the annual reports of the regents, the interests of the college have been discreetly managed, and the cause of learning successfully promoted."

The bill was not passed over the veto.

April 4. To the Speaker of the Assembly:

"SIR.—I observe by the minutes of Wednesday, that the house has before them a bill relating to certain crimes, one object of which is an alteration of the punishment to be inflicted in cases of petit larceny.[6] Considering this bill as intimately connected with an institution, the success

[6] The Legislature passed an act concerning crimes, but it was vetoed at the opening of the next session.

of which I have much at heart, because I believe it founded in humanity and sound policy, and therefore wish to see it disincumbered of all petty offenders, I take the liberty of suggesting for the consideration of the house the expediency of substituting in cases of petit larceny, a system of privations in place of long imprisonment and corporeal punishment. The idea is not my own, but has been suggested to me by a well informed and very respectable gentleman of the society of friends, whose knowledge of the human character, and opportunities of discovering the effects of different modes of punishment, render him, in my opinion, a safe guide whom we may venture to follow without fear of being misled. The plan is to make the punishment of petit larceny, confinement in the county prisons for a term not to exceed three months, according to the circumstances of each case, to be secluded as far as possible from human intercourse, and subsisted on bread and water, except in cases of serious illness.

The advantages arising from such a system, will be found, on reflection, to be many, those which at first present themselves are economy; and that habit of reflection which great temperance in diet never fails to produce, and which almost always leads to an amended life, a bible should be the constant companion of each criminal room. In looking over the accounts of the state prison, it will be found that its expenses for the year ending 31st December, 1803, amounted, including the disbursements for the conveyance of prisoners, to the sum of $25,066.50 cents, and the profits of the labor performed by the convicts, to the sum of $25,084.21 cents; since which period a heavy annual balance has been reported against the prison. The cause, in my opinion, ought to be examined.

I am, sir, your humble servant,

MORGAN LEWIS."

April 6. To the Assembly: Transmitting the return of the militia for 1806.

April 6. To the Assembly:

Objections by the Council of Revision to a bill "to restrain insurance of lottery tickets, and for other purposes." [7]

"Because the last section of the bill declares it to be unlawful for any company not incorporated by the laws of this state or of the United States, or any private individual not residing within this state, to set up and keep within this state, by their agent or otherwise, any office to insure houses or goods against fire, or vessels or merchandise against maritime losses, and that every such insurance shall be void, and every person receiving any premium therefor shall forfeit double the amount thereof.*

1st. This provision is inconsistent with the 2d section of the 4th article of the constitution of the United States, which declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.' This inter-community of privileges secured to the citizens of the several states, applies to their personal rights and immunities, and among others to the free right to exercise trade and commerce. It goes to interdict all commercial exclusions and discriminations as between the inhabitants of different states. But the bill in question creates a new and injurious distinction; it denies the citizens of other states a right allowed to the citizens of this state, of making a contract of insurance by an agent; an inhabitant of Albany may, by his agent, keep

[7] This bill was not passed over the veto, but another act limited to insurance of lottery tickets was passed, and became a law, chap. 181, on the 7th of April.

* See Blake v. McClung (1898) 172 U. S. 239; Orient Ins. Co. v. Daggs (1899) 172 U. S. 561. A corporation is not a citizen within the provisions of the Federal Constitution relating to the privileges and immunities of citizens.

an insurance office in New York, but if the bill passes, an inhabitant of New Jersey may not. This is an unconstitutional discrimination in a matter of personal privilege, and it is an unpardonable prohibition. If the bill had prohibited all insurance by private individuals or companies, by means of agents, whether the individuals or companies did or did not reside within this state, then there would have been an equality between the civil immunities of the citizens of this and the other states, and the present objection would not have applied. But as the bill is now to operate, the prohibition might, upon the same principle, and with equal right, be extended to interdict a non-resident merchant or manufacturer from keeping an agent or warehouse in New York for the sale of his goods or productions.

2d. The bill is repugnant to the general good. A contract of insurance, when founded on a substantial interest, and not perverted to gambling, perhaps is one of the most useful species of contracts which arise in the whole course of commercial transactions. It ought to be left freely to be made, and not placed under the restrictions of a monopoly. If a company, or an individual, in another state will insure upon more reasonable terms, or possesses a sounder credit, or a more prompt disposition to adjust losses than any with us, why should a citizen of this state be denied the privilege of obtaining such insurance, and if his privilege to do so is admitted to be entire and perfect, why should a legal embarrassment be thrown in his way, by prohibiting such insurances through the means of an agent here? It is a plain and most convenient rule of law, that all contracts are equally valid, when made by an authorized agent, as when made by his principal, and this rule ought not to be set aside without some important object, which is cogent in its reason and general in its application. The only apparent tendency of the provision in the bill is, to render it very inconvenient to effect insurances

except with insurers who reside in New York and why should this inconvenience be created. It is indirectly compelling the public to deal with the New York insurance companies, and with no other. This may advance the interests of the stockholders in those companies; but, by diminishing the competition, and thereby ratifying the premiums for insurance, it operates as a tax upon the community at large. It is a maxim, that applies to every kind of business, that the public is generally best served where the door is left open to every one equally to advance his claims for employment; sound policy would seem therefore to dictate that a free and unfettered competition be left between our underwriters and those abroad, as our citizens would then be enabled to cover their property from loss by resorting to those persons who, in their judgment, would do it with the lowest premium and upon the best security."

April 7. The Legislature adjourned without day.

DANIEL D. TOMPKINS, Governor.

The Legislature met the 26th of January, at which time Governor Tompkins delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.—You are convened to deliberate and decide upon the important concerns of this state at a very interesting crisis of our public affairs. The pacific disposition invariably manifested and pursued by the wise and faithful administrators of the general government has hitherto succeeded in shielding us from a participation in those calamities and miseries with which Europe is scourged. It inspired sanguine hope that measures, dictated by a spirit so conciliatory, would be attended with continued exemption from foreign insult, depredation or war. But the late unprovoked and unprecedented attack upon the frigate Chesapeake by a British vessel; the unwarrantable pretensions of Great Britain to arrest and bear away seamen from our ships upon the ocean, to intercept and destroy our lawful commerce with nations with whom she is at war, and the glaring infringements of the established principles of the law of nations, avowed and practised both by France and Great Britain, have seriously impaired the rights, wounded the honor, and assailed the independence of our country.

These events have diminished the hope of maintaining peace, notwithstanding the uniform observance of justice and good faith towards other nations, and have produced the necessity of resorting to energetic measures. The proceedings, adopted on the emergency by our national legislature, will be found, upon an unprejudiced consideration,

Daniel D. Tompkins

not only impartial towards the contending nations of Europe, but also well calculated to protect our mariners and preserve the merchandise of our citizens, should an appeal to the sword become inevitable. In such an event, property of immense value will be secured in our country, which, but for the embargo, might have enriched the coffers of the very enemy with whom we may have to contend. The causes of misunderstanding and obstacles to amicable adjustment, arising from captures under blockading decrees and from impressment of seamen, will also thereby cease to be multiplied. The well known facts, that the commercial enterprise of France and her allies has, from a variety of causes, become almost extinct, and that she materially depends for her necessary supplies of provisions and other articles of foreign merchandise, and for the transportation of her colonial produce, upon the unrestrained commerce of American merchants, independently of the acknowledged integrity and patriotism of our public agents, repel the absurd idea that the recent measures originate from partiality to that country, or from any subserviency to her views.

Every liberal and candid mind will ascribe the imposing an embargo, to a sincere desire to avoid an interference in European broils, to protect our seamen and to secure the property of our citizens in the event of an unpropitious termination of our negotiations with any of the belligerents. What patriotic citizen will murmur at the temporary privations and inconveniences resulting from this measure, when he reflects upon the vast expenditure of national treasure, the sacrifice of the lives of our countrymen, the total and permanent suspension of commerce, the corruption of morals and the distress and misery consequent upon our being involved in the war between the nations of Europe? The evils which threaten us call for a magnanimous confidence in the efforts of our national

councils to avert them; and for a firm and unanimous determination to devote everything that is dear to us to maintain our rights and national honor.

Being thus circumstanced, it becomes our duty to be assiduous in providing for the welfare and security of the persons and property of the citizens of this state. The appeal to the general government for an efficient and permanent fortification of the city of New York has not failed to excite their serious attention to that subject. The plan which has been undertaken, the degree to which it has progressed, the operations contemplated to be pursued, and the measures to which your sanction is desired, will be communicated to you without delay.[1]

Although our anxiety is alive to the protection and safety of the city of New York, and although our exertions to obtain complete security for that important capital should continue ardent and unceasing, we ought not, at the same time, to be unmindful of the exposed situation of our brethren upon the northern and western frontiers of our state. That enterprising portion of the community which has penetrated the wilderness and extended civilization and improvement to the very borders of our expanded territory looks to you for assistance and protection at this momentous period. The hardships and difficulties to which they have submitted, their dispersed situation, their remoteness from the deposits of military stores, and the markets at which they may be purchased, the scarcity of money incident to new settlements, their exposure to the sudden attacks and merciless cruelties of unrelenting savages, and the unanimity with which they have tendered

[1] An act to contribute to the defence of this State and for other purposes, Chap. 131, passed April 6, appropriated $100,000 for the defence of New York, to be expended under the Governor's direction. Chap. 48, passed March 11, made provision for a powder magazine in New York, and chap. 61, passed March 19, authorized the erection of a State arsenal in that city.

their services at the call of their country, combine in giving force to their entreaties to be furnished with the means of self defence.[2]

It affords me sincere satisfaction to inform you, gentlemen, that the detachment and organization of our quota of one hundred thousand men has been accomplished, and a return thereof for the war department nearly completed. The patriotism displayed on this occasion by every description of our fellow citizens, merits the greatest applause. All the artillery of the detachment, and most of the cavalry and infantry are volunteers; and thousands beyond the complement required have tendered their services with promptitude and zeal. This generous conduct affords a pleasing evidence of the alacrity of our militia in advancing to the defence of their country, and of the valor which they will display in supporting its honor and freedom.

The obstacles encountered by the militia officers in detaching and organizing this quota, suggest the propriety of some alterations in the act, organizing the militia of this state. By the 3d and 5th sections of that act, it is provided, that the cavalry and artillery shall parade for annual inspection under the orders of the brigadier generals of infantry. It does not require the inspectors of infantry to transmit copies of the returns to the cavalry and artillery officers. When therefore the latter are directed to detach any of their men, their ignorance of the number and equipments of the several corps, precludes the possibility of an immediate compliance with the order. This defect may be remedied either by appointing brigade officers of artillery and cavalry, to inspect and make inspec-

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2 Chap. 7, passed February 12, provided for the defence of the northern and western frontiers. Chap. 131, passed April 6, made various military and other appropriations, including $20,000 for use on the northern and western frontiers. Another act, chap. 168, passed April 8, authorized the purchase of an additional quantity of ordnance, arms, and ammunition.

tion returns of their brigade to the general officers thereof, or the additional duty of furnishing them with copies of the returns, might be imposed on the brigade inspectors of the infantry. Should a sudden emergency produce the necessity of calling for a quota of militia, in any one year after the parades of that year had taken place, it may be questioned whether the men so detached could be compelled to assemble again in the same year, without compensation as for actual service, and it is therefore respectfully submitted whether it would not be discreet to direct in such case, an additional parade of the detached corps for the purpose of obtaining muster-rolls and inspection lists. The expensive equipments of the cavalry, and the propriety of affording them equal encouragement with other uniform troops, suggest the expediency of extending to them the privileges enjoyed by the artillery.[3]

The officers appointed by an act of the last session to cede to the United States the jurisdiction of certain parcels of land, have not met for that purpose; as their power did not extend to those places of which jurisdiction has been requested, it became unnecessary to convene them. The places to which this request relates, will be specified in a separate communication.[4]

The proceedings under the act of 1806 for procuring ordnance and ammunition will also be speedily submitted.

The sum of three thousand dollars, granted for the purpose of erecting a powder magazine near the city of New York, has not been expended. The act contemplated a different site from that on which the old magazine is situated, and the sum appropriated proved inadequate to the purchase of another eligible tract and the erection of a building. [See note 1.]

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3 General amendments to the militia law were made by chap. 154, passed April 8.

4 The jurisdiction of the cession commissioners was extended by chap. 51, and they were thereby enabled to take the action indicated in the Governor's message.

I have deemed it a duty to exercise the discretion confided by the constitution to the chief magistrate,[a] in respiting the execution of John Williams, lately convicted of murder in the county of Greene. The evidence adduced upon his trial, accompanied by the opinion of the presiding judge, will be immediately communicated for your consideration. The importance to the public, and to the individual, of every question, the decision of which involves the life of a fellow creature, imposes the duty of affording to this case, impartial inquiry and solemn deliberation.[5]

The persons authorized by an act of the last session to confer and agree with those appointed by the legislature of New Jersey, respecting certain claims of jurisdiction and territory, have adjourned without adjusting and without a prospect of settling the controversy arising upon those claims. The measures, subsequently adopted by the legislature of that state, require your early attention. While it is our duty to cultivate and preserve amity with every member of the Union, it behoves us to guard with circumspection, and support with firmness, the rights of this state.[6]

In every well regulated community, there are no institutions of higher concern than those which relate to the administration of civil and criminal justice. Our property, our liberty, and our lives depend on the adjudications of our courts. Hence it is highly interesting to all, that those who preside in them should be men of competent abilities and unsuspected probity. To call forth adequate talents and character to fill the seats of justice, such salaries should be given as will enable the judges to support them-

[a] Const. 1777, § 18.

[5] By chap. 144, passed April 6, the sentence of death in the case of John Williams was commuted to imprisonment for five years.

[6] By chap. 135, passed April 6, the Governor was directed to preserve the jurisdiction of the State in that part of its territory affected by the New Jersey controversy, and if necessary to employ counsel for that purpose.

selves and families, and in some degree provide for that retirement contemplated by our constitution.[b] In addition to the permanent salary, an act, which has recently expired, allowed to the judge of the supreme court holding the circuit or sittings in New York an extra compensation. By that act also, the judges residing in the city of New York were authorized to receive fees for chamber business. Whether a mode of compensating the judges for the extraordinary services required by the immense increase of business in the city of New York, less partial in its operations cannot be devised, is submitted to your wisdom. I think it my duty to observe to you, that the multiplication of suits, from the increase of population and the organization of many new counties, will require the judges to be absent from home, at a great expense, for much longer periods than formerly; and that considerations of justice seem to me to require a provision equal at least, to that of which they are deprived by the expiration of the before mentioned act.

The improvement of agriculture, manufactures and commerce will, at all times and under all circumstances, attract the attention, and command the exertions of a just and wise government, but in our present situation, external commerce being almost entirely cut off, and when it is not improbable that an appeal to arms will soon be made, it is peculiarly important to adopt all measures in our power, in order to increase the means of supplying ourselves, and to encourage those arts which contribute to the support and comfort of human life; to facilitate interior communication, and to invigorate the enterprising spirit of our country. Nor will the great and important duty of disseminating useful knowledge, at any time, or in any crisis, escape the attention and encouragement of a liberal, enlightened and patriotic legislature.

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[b] Const. 1777, § 24.

Permit me, gentlemen, through you to communicate to the electors of this state, my grateful acknowledgments for the confidence they have been pleased to repose in me. While my sensibility is awakened by the distinguished honor they have conferred, I can honestly assure them, that my conduct shall always be directed by a zeal to advance their welfare.

May that wise and benign Providence which has dispensed its richest favors to our country, endow us with wisdom to discern, and virtue to pursue, the best means of perpetuating the blessings we enjoy!

DANIEL D. TOMPKINS.

Albany, January 26, 1808.

SPECIAL MESSAGES.

January 26. To the Senate:

Objections by the Council of Revision to a bill passed at the last session "relative to certain crimes therein mentioned." [7]

"1. Because by the 6th section of the bill, certain offences, committed without the limits of this state, by a citizen thereof, are made cognizable in the courts of this State, equally as if they had been committed within one of its counties. This may perhaps subject the party offending to a double punishment for the same offence; for if he should commit one of the offences enumerated in the preceding sections, in any other state in the union, against the bank paper of such state, he would of course be liable to punishment in such state; and no sufficient reason appears, founded either in justice or sound policy, why the courts of this state should take cognizance of such offences. Every community is to be deemed competent to preserve

[7] The bill relative to crimes was not passed over the veto, but another bill on the same subject was passed and became a law, chap. 155, on the 8th of April.

itself, and to exact obedience to its laws. The provision in question is in this view a novel one, and contrary to the fundamental maxims of civil government.

It is very questionable, also whether an act done without this state, and within the jurisdiction of another government, although such act relate to the bank paper of this state, ought to be made cognizable here, because it is an obvious and acknowledged principle in legislation that laws have no operation beyond the jurisdiction of the government which enacts them; and it would seem to be a solecism in jurisprudence to hold a law broken, by an act done beyond the limits of its operation.

Because, by the ninth section of the bill, the courts of general sessions of the peace, are authorized to punish, by whipping, persons convicted of petit larceny. This punishment is calculated not to reform but to harden offenders, because it covers them with indelible disgrace. Its example is injurious to the spectators, because the punishment naturally excites disgust in some, and hardens sensibility in others. It is pernicious as a precedent, because it is an important innovation upon the principles of the new criminal code, established within the last twelve years, and recalls the vestiges of the former system which it was then deemed an effort of humanity to obliterate."

January 27. To the Legislature: Transmitting a letter from President Jefferson in reply to the following address presented to him by the Legislature in March, 1807:

"To THOMAS JEFFERSON, *President of the United States.*

SIR.—The Legislature of the state of New York, sensible of the benefits derived from your past services, and anticipating the importance of your future exertions to promote the happiness of your country, feel a peculiar pleasure in

expressing their approbation of your conduct in the execution of the arduous duties devolved on the chief executive of the nation.

Under your administration our liberties have been maintained, our rights protected, and our independence preserved inviolate. Amidst the wars and tumults of a troubled world, the American name and character have acquired respectability among foreign nations, by the moderation, impartiality and wisdom of your measures, in preferring amicable negotiation to unnecessary warfare, in purchasing territories which might have been conquered, and in distributing equal justice to the weak and the powerful, the savage and the civilized powers.

The natural tendency of civil government to extravagance and oppression, has been happily counteracted by the establishment of a system of economy in public expenditures, and by the abolition of useless offices and employments. Our public debt, which was absorbing the revenues of the nation, and leading rapidly to heavy taxation and the impoverishment of the people, has been greatly diminished. The principles of our revolution and the principles of our constitution have been restored and supported by your administration. The agriculture, the commerce, the manufactures and the population of the country have increased and flourished beyond all former example, and the blessings of prosperity have been felt in every part of the union, and by all descriptions of our citizens. The murmurs of opposition to a system of wise measures, calculated to produce peace at home and ensure respect abroad, have been silenced, not by the strong arm of power, but by the authority of reason and the force of truth. When, sir, we perceive these inestimable blessings, and consider your distinguished agency in producing them, we cannot refrain from indulging an ardent wish that our country may retain the aid of those talents and that patriotism, to which, under the smiles of providence, we are so

greatly indebted. Under these impressions, we sincerely hope that you may feel disposed to accord with the general wish of your fellow-citizens, by again consenting to be a candidate for the greatest honor which a nation of freemen can bestow, and a friend of freedom can wish to receive, and we are firmly persuaded that you will be supported with zeal by every enlightened friend of the liberty and prosperity of the United States."

The following is the President's reply:

TO THE LEGISLATURE OF NEW YORK.

"I received in due season the address of the legislature of New York, bearing date the 13th day of March last, in which, with their approbation of the general course of my administration, they were so good as to express their desire, that I would consent to be proposed again to the public voice, on the expiration of my present term of office.

Entertaining, as I do, for the legislature of New York, those sentiments of high respect which would have prompted an immediate answer, I was certain, nevertheless, they would approve a delay which had for its object to avoid a premature agitation of the public mind, on a subject so interesting as the election of a chief magistrate.

That I should lay down my charge at a proper period, is as much a duty as to have borne it faithfully. If some termination to the service of the chief magistrate, be not fixed by the constitution, or supplied by practice, his office, nominally for years, will, in fact, become for life; and history shows how easily that degenerates into an inheritance.

Believing that a representative government, responsible at short periods of election, is that which produces the greatest sum of happiness to mankind, I feel it a duty to do no act which shall essentially impair that principle; and I should unwillingly be the person, who, disregarding the sound precedent set by an illustrious predecessor,

should furnish the first example of prolongation beyond the second term of office.

Truth also requires me to add, that I am sensible of that decline which advancing years bring on; and feeling their physical, I ought not to doubt their mental effect. Happy, if I am the first to perceive and to obey this admonition of nature, and to solicit a retreat from cares too great for the wearied faculties of age.

For the approbation which the legislature of New York has been pleased to express, of the principles and measures pursued in the management of their affairs, I am sincerely thankful, and should I be so fortunate as to carry into retirement the equal approbation and good will of my fellow citizens, generally, it will be the comfort of my future days, and will close a service of forty years with the only reward it ever wished.

TH: JEFFERSON."

December 10th, 1807.

January 27. To the President of the Senate:

ALBANY, 27*th January*, 1808.

"SIR.—I have the honor to enclose for the consideration of the legislature, a statement of the evidence delivered upon the trial of John Williams, and the letter of Mr. Justice Van Ness, recommending a respite. [See note 5.]

I am, Sir,
With much respect,
Your obedient serv't,
DANIEL D. TOMPKINS."

The HON. JOHN BROOME,
President of the Senate.

January 27. To the Assembly: Transmitting a resolution adopted by the Vermont legislature recommending an amendment to the federal constitution authorizing the President to remove any judge of a federal court on the

address of a majority of the House of Representatives and two-thirds of the Senate.

February 1. To the Assembly: Transmitting the annual report of the Commissary of Military Stores and of the Inspector General of Staves and Heading.

February 2. Thanking the Senate for its address.

February 3. To the Senate:

"GENTLEMEN.—The enclosed documents will afford the legislature a full view of the operations of the general government towards fortifying the city of New York, and of the measures necessary to be taken on the part of this state, to authorize the prosecution of the plan, suggested in the letter of the Secretary at War, and of the arrangements mentioned in the letter of Col. Williams. When the latter requests a cession of the title and jurisdiction of all the land owned by the State adjoining the buildings, purchased by the United States of Mr. Lent, I presume he refers to the ground upon which Mr. Lent's buildings are erected, and the lots to the southward of it, and not to the ground appurtenant to the government house.

DANIEL D. TOMPKINS."

Albany, Feb'y 1st, 1808.

These papers included a communication from Vice-President George Clinton with an accompanying letter from the Secretary of War, giving detailed plans of fortifications to be constructed for the purpose of defending New York harbor. There were also other papers relating to the same subject. (See note 1.)

February 3. Thanking the Assembly for its address.

February 9. To the Senate:

ALBANY, *6th February*, 1808.

"SIR.—I have the honor to transmit my father's* resignation of the office of regent. The death of the Rev. Dr.

*Jonathan G. Tompkins.

Linn and of the honorable Zephaniah Platt, together with the enclosed resignation, will occasion three vacancies in the regency.[8]

DANIEL D. TOMPKINS."

February 15. To the Senate: Transmitting a report of the commissioners on the New Jersey boundary appointed by an act passed at the last session. [See note 6.]

February 15. To the Assembly:

"GENTLEMEN.—Herewith you will receive my account of receipts and expenditures, pursuant to the act for procuring ordnance and ammunition.

The castings which have been completed and delivered, consist of ten brass three pounders, four six pounders, four medium twelves, and one provet. The residue of the materials belonging to the state, will be cast as soon as the arrangements of the furnace at Georgetown will admit. In addition to the above, I have caused to be purchased, one heavy brass six, and two four pounders.

Eight carriages for the threes are completed, and the remainder of the above mentioned artillery will be mounted as speedily as possible. Two travelling forges have been ordered to be made. A quantity of ball has been contracted for in Albany, and the commissary of military stores is directed to purchase an additional quantity in New York. Should the legislature be of opinion, that the act above mentioned, does not authorize the governor to direct the casting of mortars, it would be advisable to provide for the casting or purchase of at least two eight inch and ten inch mortars. The greater cheapness and almost equal usefulness of iron ordnance, and the scarcity of the materials for fabricating brass artillery, induce me to

[8] DeWitt Clinton, Peter Gansevoort, Jr., and Alexander Sheldon were appointed Regents in place of those mentioned in the Governor's message.

recommend a provision for procuring and equipping a number of iron eighteens and twenty-fours.

The several captains of artillery companies, cannot conveniently afford the expense of erecting gun houses for the preservation of their pieces and implements. The loss annually sustained by the state, for the want of such houses, in the wastage, damage and losses of the carriages, boxes, tumbrels, harness, &c. suggests the propriety of making a small appropriation for erecting gun houses, in such places as some proper officer may designate.

A recent act of the legislature will render it necessary to remove a considerable part of the small arms and fixed ammunition from our arsenals. The safety and welfare of the state require a considerable supply, in lieu of those removed. It is therefore submitted, whether they cannot be delivered cheaper by contracting for considerable quantities at one time, and whether it would not be advisable to leave to the officer authorized to purchase two thousand arms, by an act of the last session, and to the officer who may be directed to provide an additional supply, the discretion of procuring arms, either of home or foreign manufacture, accordingly as they can be obtained more speedily or upon more economical terms.

The public exigence also requires an appropriation to defray the expense of preparing more fixed ammunition than is at present possessed by the State.

DANIEL D. TOMPKINS."

Albany, February 15th, 1808.

February 26. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

February 29. To the Assembly: Transmitting a resolution from the Delaware legislature disapproving the Vermont resolution relative to the removal of federal judges.

March 7. To the Assembly: Transmitting a letter from the Governor of Virginia with an accompanying resolution adopted by the Legislature of that State, recommending an amendment to the federal Constitution authorizing the removal of a United States Senator by a majority of the legislature of the state represented by him.

March 7. To the Assembly:

"GENTLEMEN.— Having been informed that a joint committee has been appointed to inquire whether any alterations in the laws relative to the court of chancery are necessary, I take the liberty of submitting to the consideration of the legislature, the information upon that subject, contained in the enclosed communication of his honor the Chancellor.[9]

DANIEL D. TOMPKINS."

Albany, March 7th, 1808.

March 26. To the Assembly: Transmitting the annual return of the militia.

April 11. The Legislature adjourned to meet on the first Tuesday of November, 1808.

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[9] The Legislature adopted a concurrent resolution requesting the Governor to employ one or more lawyers to revise the procedure in the Court of Chancery, and the Governor was also requested to present the proposed plan to the Legislature at the next session.

DANIEL D. TOMPKINS, Governor.

FIRST MEETING.

The Legislature met on the 1st of November, according to adjournment, and the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND ASSEMBLY.— At the commencement of the last session I had the honor of expressing to the legislature my opinion respecting the measures adopted by the national councils to prevent our being involved in the desolating wars of Europe. Nothing has since occurred to produce a change of that opinion, or to impair my confidence in their exertions and zeal to avert, as far as is consistent with the welfare and independence of our country, the calamities of war. I am however, compelled with regret to inform you, that I am not apprised of any material alteration in the state of our foreign relations since that period. The embarrassments to commerce and agriculture, incident to the existence of the embargo, are still experienced, and should they continue, they must be ascribed to the perseverance of the belligerents in their illegal and unjust aggressions upon the commerce of the United States. This consideration affords additional motives for enduring with patience the privations resulting from the counteracting measures of our own rulers, and for yielding a warm, unanimous and decided support to their prudent and incessant efforts to maintain, without an appeal to arms, the honor of our country, and the rights and tranquillity of its citizens. Should our hopes of an amicable accommodation of existing differences be frustrated by an obstinate adherence of the belligerents to their unprincipled and arbitrary restraints upon neutral

commerce, and a resort to the sword become inevitable, we can meet the event with a consciousness of the rectitude of our cause; with a firm dependence on the patriotism and bravery of freemen, and with a humble reliance on the protection of that providence who has hitherto favored us.

The period for which the President and Vice-President of the United States were elected, expires on the fourth day of March next. The appointment of electors to represent this state in the choice of successors to those distinguished personages, is the principal business for which you are now convened.[1] I however avail myself of this occasion to submit to your consideration some topics not immediately connected with this prominent duty.

It has not probably escaped your observation that on the eighth day of March last, a law was passed inflicting death for a crime which antecedently subjected the offender to imprisonment in the state prison for life, and authorizing whipping for petit larceny. It has been justly observed that punishments, mild, speedy and certain are the means best calculated to answer the end of criminal jurisprudence, that they ought always to be proportioned to the crime, and that the reformation as well as the punishment of the offender ought to be constantly and steadily kept in view. The spirit of freedom, the dictates of humanity, and the principles of christianity, require that the awful penalty of death should be inflicted as seldom as possible. The scene of distress and agony exhibited at an execution, naturally excites an aversion to the laws which sanction such severity. Punishments will also be more certain when moderate and rational, because those who are best able to prove the guilt, or who may be most materially affected by the crime, will then feel no reluctance, nay, will cheerfully perform the duty of detecting and exposing every

[1] Presidential electors were chosen by the Legislature on the 7th of November.

offender. The jury will be less anxious to seize upon specious doubts to justify an acquittal and but a feeble hope of escaping the sentence of the law, by technical objections to matters of form, or by executive clemency, will be entertained. Besides, by substituting imprisonment at hard labor, society is relieved from the painful responsibility of sending one of its members suddenly and perhaps unprepared to the tribunal of his God. The fruits of his labor inure to the benefit of the community or his family; the regimen of the prison precludes gambling, idleness and debauchery, the usual preludes to greater enormities; and that discipline united with the religious exercises of the institution, afford to the charitable and philanthropic mind at least a glimmering hope of ultimate repentance and reformation. Impressed with a decided opinion that the deprivation of life is seldom necessary, and that it is incompatible with the genius of free government, and the state of civilization and refinement of which we boast, I am constrained by a sense of duty to suggest the absolute necessity of forbearing to extend that punishment to other crimes than those of treason and murder. With respect to whipping for petit larceny, I would remark, that there are various reasons which might be assigned in favor of confinement at hard labor in preference to corporal pains. By the former, the offender is deprived for a period at least, of an opportunity of repeating his crime, whilst in the latter case, he is forthwith discharged to renew his depredations. A term of temperance, labor, and privation affords a hope of amendment. While on the other hand, reason and experience abundantly testify that no such reformation can be wrought by the agonies of a lacerated body; for the publicity and ignominy of the punishment stifle every remnant of pride and ambition, and destroy the prospect of ever regaining a character. I might also add, that the frequent exhibition of cruel and sanguinary punishments wounds the sensibility of the humane, and

corrupts the disposition, and depraves the morals of a great proportion of the spectators. With deference, therefore, I submit to your wisdom the propriety of totally exploding corporal chastisement from our criminal system.[2]

There is much reason to believe that the prevalence of crime of a deeper dye are too often the result of impunity for offences of an inferior grade. Although the legislature have, by a variety of statutes enacted numerous regulations to prevent practices of an immoral and dangerous tendency, and which are generally the commencement of a career of more iniquitous and criminal conduct, and although the provisions of those statutes are daily and notoriously violated, yet the instances in which they are enforced, are astonishingly rare. The security with which one law is publicly infringed, not only creates an expectation of similar impunity for the violation of others, but also produces a contempt of the laws generally. Your wisdom will determine whether some more suitable measures ought not to be devised to ensure their observance.

The execution of the sentence of Rufus Hill, convicted of murder at the last court of oyer and terminer, in Che-

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2 The crimes act of 1808, chap. 155, imposed the death penalty on a person convicted of burning an inhabited dwelling. The same penalty was imposed by the act of 1788, chap. 37, passed February 21, but the punishment was reduced to imprisonment for life by the act of 1796, chap. 30, passed March 26. The Governor objected to the restoration of the death penalty, but the Legislature did not immediately respond to his suggestion that this penalty should be imposed only in cases of treason and murder. The punishment imposed by the act of 1808 was continued by the Revised Laws of 1813, and by the Revised Statutes. But the punishment of death was limited to cases of treason and murder by the act of 1860, chap. 410, which rule was reaffirmed by the act of 1862, chap. 197.

The act of 1808 to which the Governor referred, imposed a fine or imprisonment as a punishment for petit larceny, with an alternative of whipping not exceeding thirty-nine lashes for one offence. The alternative was omitted by the Revised Laws of 1813.

An act relative to crimes was passed March 27, 1809, chap. 138.

The act of 1860, chap. 410, was held unconstitutional in Hartung v. People (1860), 22 N. Y. 95; Shepherd v. People (1862), 25 N. Y. 406; Kuckler v. People (1862), 5 Park. Crim. Rep. 212.

nango County, has been suspended. A statement of his case will be submitted to you without delay.[3]

Most of the arms, ammunition, and military stores. destined for the northern and western frontiers, have been delivered at their respective places of deposit. Those for the counties of Clinton and Essex are on their way, and those to be deposited in Jefferson county are at Utica, and will be speedily transported to Champion.

Under the act authorizing me to select and receive a title for one of the lots of ground offered by the corporation of New York for the erection of a State Arsenal, I have been enabled by the liberality of that respectable body, to obtain two of those lots, and a conveyance of them to the people of this state has been executed and delivered. The building has been finished, and the account of disbursements will be exhibited to you during the present session.

The proceedings which have taken place relative to the acquisition of the title of Ellis's or Oyster Island for fortifications, and of Watch Point for a lighthouse, and also under the act for procuring an additional supply of ordnance, small arms and ammunition, will be particularly detailed in a future communication.

The powder magazine and a dwelling house for the superintendent will be completed in a few days. The quantity and situation of the land obtained for this purpose, with an account of the money drawn and expended will be the subject of a special message.

It affords me pleasure to inform you that the fortifications erecting under the authority of the United States for the defence of the city of New York, have been prosecuted with activity and zeal. A variety of circumstances have retarded the commencement of the expenditure of one hundren thousand dollars appropriated for that object by the legislature of this state. To accomplish their views by devising and commencing works upon which the greatest

[3] Rufus Hill was pardoned by chap. 11, passed February 2, 1809.

number of distressed persons might be employed, and which might be in concert with the defensive operations of the general government, and at the same time to apply the sum granted in the most economical and beneficial manner, was a task replete with anxiety, responsibility and embarrassment. I have the satisfaction to inform you, that with the intelligence and generous assistance of Colonel Williams, chief engineer of the United States, whose services merit the highest encomium, those difficulties have finally been surmounted, and I flatter myself the place which has been decided upon, and the plan of the works to be erected, will meet your approbation.

It is our lot, gentlemen, to live in a portentious period. The old world is shaken to its center by the mad ambition of its potentates; and Europe exhibits an affecting spectacle of blood and warfare. It has been the alternate policy of two of the belligerents to entangle us in their quarrels; hitherto we have escaped, but it requires almost superhuman wisdom in our rulers to preserve our sovereignty and independence and to avoid being engaged in their wars. Thus situated, it is our solemn duty to second the efforts of those to whom we have entrusted the highly responsible rights of peace and war. It is our duty to strengthen the hands of government by imparting a liberal confidence when our dearest rights are not only in jeopardy but actually invaded, and to prove to the world that we are not a divided people, but that we are in truth Americans.

With an ardent wish that harmony may prevail in your deliberations, and that your proceedings may promote the welfare of our constituents, I tender you an assurance of my readiness to co-operate in your labors to promote the common benefit.

DANIEL D. TOMPKINS.

Albany, November 1, 1808.

SPECIAL MESSAGES.

November 1. To the Senate:

Objections by the Council of Revision to a bill, passed at the last session, "to enable the directors and company of the Canajoharie and Palatine Bridge to rebuild the same."

"Because by the first section it is enacted, that such stockholder as shall not pay on each share the first requisitions of the additional sum of fifteen dollars on or before the time limited for the payment thereof, is not only deemed to have waived his or her right of increasing the sum payable on each share as to the shares on which such payment shall not be made, but the president and directors are authorized to cause such shares so waived, to be sold at public vendue in manner therein described, and to pay the proceeds arising from such sale, to the person or persons who were the owners of such shares, in proportion to the number of shares such person may have had, after deducting the costs of advertising and sale thereof; whereby the existing right of such stockholder, under the act, entitled 'an act to authorize the building a toll bridge over the Mohawk river,' passed the 31st March, 1801, would be materially impaired, if not virtually extinguished, without the consent of the stockholders."

The bill was not passed over the veto.

November 1. To the Assembly:

Objections by the Council of Revision to a bill, passed at the last session, "supplementary to the act entitled 'An act to grant to Terence Donnelly and others, the exclusive right of running stage wagons on the west side of Hudson's River between the city of Albany and the northern boundary line of the State of New Jersey,' passed the 26th of February, 1803."

"1st. Because the provision to make by-laws, by a majority of the proprietors named in the act, to which this

bill is intended to be supplementary, does not appear to have been prayed for by all the proprietors; and the right of the majority to control, will operate as an invasion of the interests of the minority, by depriving them of the legal power of giving or withholding their consent to any measures affecting such interests.

2d. Because the bill is unprovisionary as to the manner in which representations of the original proprietors are to be admitted to vote, in case of the subdivision of their shares."

The bill was not passed over the veto.

November 2. To the Assembly: Transmitting papers in the case of Rufus Hill under sentence of death for murder. (See note 3.)

November 3. To the Assembly:

"GENTLEMEN.—By an act of the last session of the Legislature, the Executive was authorized to organize companies and battalions of flying, or horse artillery. Pursuant to this authority, some companies have already been organized. The utility of this description of troops, has been fully evinced in Europe; and they are more particularly beneficial, in a country having frontiers, so extensive as those of the United States. The only treatise upon the manoeuvres of horse artillery, which has appeared in this country, was furnished by General Kosciusko, to General William R. Davie, and by him presented to the United States Military Philosophical Society. The respected and learned President of that institution has at the request of the donor, translated and published it for the benefit of the society. A copy of the work is herewith transmitted to the legislature. I trust they will deem it highly expedient to authorize a subscription for a number

of copies, sufficient for the use and instruction of the horse artillery of this State.

DANIEL D. TOMPKINS."

Albany, November 3, 1808.

November 3. To the Assembly: Transmitting the following letter from the Secretary of State:

"SECRETARY'S OFFICE, *November* 31, 1808.

SIR.—By an act passed at the last session of the legislature, entitled, 'An act to direct the Secretary to procure a State Standard of Long Measure, and for other purposes,' the Secretary is directed to procure two steel, brass or copper rods of the same length of a certain brass standard three feet rod, English measure, belonging to the corporation of the city of New York. Soon after the adjournment of the legislature I wrote to the clerk of the city and county of New York, and requested him to procure two rods to be made, in conformity to the Standard referred to in the act. He informed me, in answer to my application, that no such standard was in possession of the corporation, but that he understood a Mr. Hardenbrook had a three foot rod, which was made in England, in conformity to the British exchequer standard. Considering that the object of the act would be complied with so far as it related to the procurement of a correct standard measure, I directed two rods to be made, in conformity to the one in Mr. Hardenbrook's possession. But this not being the standard referred to in the act, which contains an important provision that takes effect in April next, whereby a Surveyor is precluded from giving testimony in any court in this State, respecting the lines of survey made by him, unless he can swear that the chain used by him was conformable to the standard measure of this state, legisla-

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4 The appropriation act, chap. 164, passed March 29, 1809, provided for the purchase of 250 copies of General Kosciusko's horse artillery tactics.

tive interference becomes necessary to establish the rod now procured as the state standard. I take the liberty also, of suggesting the propriety of making it the duty of the Secretary to procure all the rods to be made for the several counties of this State at their expense; such a provision will ensure a uniformity in the several county standards, and will probably expedite the distribution in the mode best calculated to promote the object of the legislature.[5]

With great respect and consideration,

I am your Excellency's

Obedient Servant,

ELISHA JENKINS."

November 4. To the Senate:

"GENTLEMEN.—The title of Ellis's or Oyster Island, in the Bay of New York, has been obtained by a course of proceedings in the Court of Chancery, authorized by the act supplementary to the act, to cede the jurisdiction of certain lands in this State, to the United States, and a conveyance of the title of the people of this State to the United States, was thereupon executed, pursuant to the said act.

The proprietor of Sands' or Watch Point, contracted with me for the sale of five acres, for the purpose of erecting a Light House; and accordingly conveyed the said five acres to the people of this State. After which, the same, in conformity to the provisions of the act, entitled 'An act to facilitate the purchase of lands for the erection of a light house at North Hempsted,' were granted to the United States; and for the purpose of vesting the jurisdiction, the requisite certificate describing the said five acres, has been duly filed in the office of the Secretary of State.

[5] An act defining the standard of measures in this State, chap. 80, was passed March 24. The act also made provision for the distribution of standards to the city of New York, the village of Utica, and each county.

The system of fortifications upon which I have concluded to proceed in the expenditure of one hundred thousand dollars, appropriated for that purpose, is fully explained in the annexed official letter of Col. Williams. A plan of the protecting work is herewith submitted to the Legislature.[6]

The accounts of disbursements under the act for the defence of the Northern and Western frontiers, and also under the act for erecting a State Arsenal in the city of New York, are also hereunto annexed. Two of the blocks or lots of ground offered by the Corporation in exchange for the old Arsenal have been obtained; the building erected is calculated to accommodate all the ordnance, arms and military stores in the city of New York. With the utmost economy, the appropriation was exhausted before the edifice was entirely finished. To have suffered the building to remain in that state, would have exposed it to great injury from the weather, and would have left a considerable portion of the public property in an unsafe situation. It was therefore deemed prudent and necessary to proceed and finish the building. The additional sum required for this purpose, is exhibited by the balance of the arsenal account. To obviate the necessity of an appropriation in money to defray that balance, and to erect the workshops and gun houses, &c., I beg leave to recommend the sale of two small gores of land belonging to the state, in the vicinity of the government house, in the city of New York.[7] In consequence of a cession, by the Commissioners appointed for that purpose, of a part of the public ground to the United States, for an arsenal, and of another part to the Corporation of New York, for the ex-

[6] The subject of fortifications received further attention by chap. 17, passed February 3, 1809, which authorized the Governor to acquire twenty acres on Staten Island adjacent to the Narrows.

[7] The sale of two gores of land in New York was authorized by chap. 9, passed November 8, 1808.

tension of Bridge Street, those two gores have been separated from the land of the State, connected with the government house, and are almost useless for public purposes.

The quantity of ground to be procured for a powder magazine, was limited to an half acre. Upon inquiry, and after earnest endeavors to accomplish the requisite purchase, it was ascertained that individuals, to whom the purpose to which the ground was intended to be applied, was disclosed, would not dispose of that quantity without an extravagant consideration. An application was therefore made to the Corporation of New York, who were so liberal as to enable me to purchase the leasehold estate, and their reversionary interest in a lot of land, containing, by estimation, ten acres, inclusive of streets, for two thousand five hundred dollars. The lot is nearly square, and is bounded on the sides by streets opened, and to be opened. As the title is in fee simple, and as ground in the vicinity of the city of New York, is constantly increasing in value, I feel confident that the Legislature will be gratified in my having availed the state of the liberality of the corporation, in obtaining a larger quantity of ground than was contemplated at the time of passing the act.

DANIEL D. TOMPKINS."

Albany, 4th November, 1808.

The letter from Col. Williams containing a detailed plan of fortifications, and also other papers referred to in the Governor's message will be found in the Senate Journal, 1808–9, beginning at page 15.

November 5 and 7. Thanking the Senate and Assembly respectively for their addresses.

November 8. The Legislature adjourned to meet the third Tuesday of January, 1809.

SECOND MEETING. JANUARY, 1809.

January 24. To the Senate: Announcing the death of Peter Sylvester, a regent of the University.[8]

January 24. To the Assembly: Transmitting the annual report of the Inspector General of Staves and Heading.

February 11. To the Senate:

"GENTLEMEN.—Several of the Oneida nation of Indians have come to this city with a view to negotiate for the sale to the state of the land lying on Fish Creek, between Bloomfield's Bridge and the Oneida Lake. It is therefore expedient that the legislature should determine whether they will authorize such purchase.[9]

DANIEL D. TOMPKINS."

Albany, February 11th, 1809.

February 15. To the Senate:

"GENTLEMEN.—Pursuant to the authority contained in concurrent resolutions of the legislature, a contract has been made with the christian party of Oneida Indians, for the purchase of the lands mentioned in said resolutions; it therefore has become necessary that provision should be made by law for the payment of the monies contracted to be paid, which will require an appropriation of about two thousand dollars for immediate payments.

I beg leave also to mention to the Legislature, that some of the pagan party of Oneida Indians are now at the seat of government, for the purpose of selling to the State a part of their lands, upon terms which appear to be equitable and highly advantageous to the State. The advice

[8] Nathan Smith was appointed Regent in place of Mr. Sylvester.

[9] A treaty was made for the purchase of certain Oneida Indian lands, and the price was provided for by chap. 29, passed February 17, and chap. 46, passed February 24. Chap. 107, passed March 24, directed the survey and sale of the lands thus acquired.

and direction of the legislature, in relation to a purchase of the last mentioned Indians, is respectfully requested. [See note 9.]

DANIEL D. TOMPKINS."

Albany, February 15th, 1809.

February 21. To the Assembly:

"GENTLEMEN.—Pursuant to concurrent resolutions of the legislature of the 15th instant, a contract has been made with the Pagan party of Oneida Indians for the purchase of their lands east of the Oneida Creek, supposed to contain twelve or thirteen thousand acres of land. The payments, to be made immediately, on this contract, will not exceed two thousand dollars, for the performance of which, an appropriation by law will be necessary. [See note 9.]

DANIEL D. TOMPKINS."

Albany, February 20th, 1809.

February 24. To the Assembly:

Objections by the Council of Revision to a bill "to enable the trustees of the Reformed Dutch Church of the township of New Utrecht, in Kings County, to sell the parcel of land therein specified."

"Because the third section of the act, entitled 'An act to amend the act, entitled 'an act to provide for the incorporation of religious societies,' passed March 14, 1806, authorizes the chancellor, upon the application of any religious corporation, to make an order for the sale of any real estate belonging to such corporation, and to direct the application of the monies arising therefrom by such corporation; and because the chancellor can, in a summary mode, with little expense or trouble to the applicant, institute an inquiry into the title by which the same is derived to such corporation, whether the same is affected by

any condition or limitation detracting from a general right of disposition, and which, if existing in this case, from the terms of the bill, appears not to have been an object of attention."

The bill was not passed over the veto.

February 25. To the Senate:

Objections by the Council of Revision to a bill "for laying out Canal Street in the city of New York."

"Because, by the seventh section of the said bill it is provided, that the commissioners therein described shall be authorized to enter upon and appropriate such lands as may be necessary for the purposes of the said act, before tender or refusal of the damages awarded or assessed therefor; and that if such damages are not paid within three years from the passing the said act, an action may be sustained by the owner of such land for the recovery thereof, from the mayor, aldermen and commonalty of the city of New York; and by the twentieth section of the said bill it is provided that it shall not be necessary to make payment or tender of any sum awarded for ground taken for streets, but that the owner of such ground may, in case the said sum so awarded shall not be paid in one year after finding verdict ascertaining the same, recover in like manner an action of debt; thus appropriating private property to public uses, deferring a recompense therefor to a remote day, and putting the owner to his action for its recovery, and thus sanctioning the dangerous doctrine that the lands of the citizens of this state may be taken from them for ordinary public exigencies without an immediate compensation, leaving the time of making it to be varied at discretion, and to be pursued in a course of litigation, which may involve great injury or even the ruin of the persons affected by it.[a]

[a] Const. 1777, § 13; 1894, art. 1, § 6; U. S. Const. 5th Am.

Because, by the thirteenth section of the said bill it is enacted, 'that whenever any of the proprietors of any such lands, tenements, hereditaments and premises, shall be infants, *non compos mentis,* or absent from the city of New York, the said Mayor, aldermen and commonalty may pay the sums mentioned in such report, that would be coming to such proprietors respectively, into the supreme court, to be secured, disposed of and improved as the said court shall direct, and such payment shall be equally valid and effectual as if made to the proprietors themselves if they had been present, of full age and *compos mentis;*' which provision is incompatible with the organization of the said court and its modes of conducting business according to the course of the common law, and because the duty thereby attempted to be imposed on the judges of that court, of securing, disposing and improving such money, is not in the remotest degree connected with the exercise of their judicial functions."[b]

The bill was not passed over the veto.

February 27. To the Assembly:

"GENTLEMEN.—I have the honor of laying before you the annual report of the commissary of military stores. In the journals of the assembly, I observe a separate communication of the commissary, relative to rifles and budge barrels, has been referred to a committee. I beg leave to mention, that the latter, being an equipment of ordnance and field artillery, is already provided for by the act authorizing the purchase of an additional quantity of ordnance, arms and ammunition for the use of this State, and for other purposes, passed April 8, 1808. I concur in recommending the purchase of from five hundred to a thousand rifles. A provision for that purpose will not require any new appropriation, as no part of the sum of

[b] Const. 1777, § 25.

sixty-five thousand dollars, granted for military purposes, by the act above referred to, has yet been drawn or expended.

DANIEL D. TOMPKINS."

Albany, February 25th, 1809.

February 28, To the Assembly:

"GENTLEMEN.—Herewith you will receive my account of monies drawn and expended, pursuant to the act, entitled 'An act for procuring ordnance and ammunition,' passed April 7, 1806, and also the account of the commissary of military stores, under the two several acts relating to the site for, and to the building of a powder magazine in the city of New York.

It will be seen by the annual reports of the comptroller and treasurer, that the sum of $33,143.80, is charged, as having been drawn for arms and ammunition generally. This sum consists of the balance of $15.58 due me, on the account rendered 15th February, 1808, (which balance was drawn during the year embraced by the annual reports.) of $25,628.22, drawn under the above mentioned act, of April 7, 1806, and accounted for in the audited account, herewith transmitted, and of seven thousand five hundred dollars, drawn under the seventeenth section of the supply bill of 1807. The principal part of the last mentioned sum has been advanced upon the contract for small arms, mentioned in the annual report of the commissary of military stores, and will be accounted for as soon as the arms are delivered by the contractor. I deem it my duty to state, thus specifically the several appropriations under which the aggregate amount mentioned in the annual reports of the comptroller and treasurer, has been drawn, as well for the purpose of rendering my distinct accounts therefor more intelligible, as to show to the legislature, that no part of the sum of 65,000 dollars, granted for military pur-

poses, by the act of the 8th of April, 1808, has as yet been withdrawn from the treasury.

It will be seen by the magazine account, which accompanies this message, that the sum appropriated for the building has proved insufficient. Perhaps no new appropriation will be necessary to meet the payment of the balance, provided the Legislature will authorize the application of the surplus proceeds of the two gores of land in New York, to be applied to that object. Sanguine hopes are entertained that the proceeds of these gores will be sufficient, not only to meet the expenses contemplated by the act directing the sale, but also to discharge the balance of the magazine account.

Most of the sums drawn under the act, for the defence of the frontiers, was included in the account rendered at the November meeting of the legislature. The accounts for the residue of that sum, and also of the expenditure of the amount drawn for fortifications and incidental expenses, will be exhibited to the legislature before the close of their present session.

DANIEL D. TOMPKINS."

Albany, 28th February, 1809.

March 1. To the Assembly:

"GENTLEMEN.—On the 7th day of March last I had the honor of transmitting to the Legislature of this state certain resolutions of the General Assembly of Virginia which communication was not acted upon during that session. The proceedings of the Senate and House of Delegates of Maryland, upon those resolutions, are now submitted to you.

DANIEL D. TOMPKINS."

Albany, 1st March, 1809.

The Maryland resolution disapproved the Virginia proposition to authorize the removal of a United States senator by the Legislature of his State.

March 2. To the Senate:

"GENTLEMEN.—In submitting to you the annual report of the Governors of the New York Hospital I take the liberty of recommending to the attention of the Legislature, the provisions necessary for extending the usefulness of the asylum for lunatics. Many of those unfortunate persons are frequently maintained by the overseers of the poor in the country towns at much greater expense and with much less comfort and opportunity of obtaining medical relief, than the asylum affords. The amendment of the act for the settlement of the poor, as proposed by the governors of the Hospital, appears to me, therefore, necessary and proper.[10]

DANIEL D. TOMPKINS."

Albany, March 1st, 1809.

March 4. To the Senate:

"GENTLEMEN.—You will herewith receive the proceedings of two of the professional gentlemen, selected by me to perform the duties contemplated by concurrent resolutions of the legislature, passed the 9th day of April last.

DANIEL D. TOMPKINS."

Albany, March 4th, 1809.

This related to the proposed revision of procedure in the Court of Chancery. The commissioners presented a bill "for the appointment of two additional chancellors, and for the better organization of the court of chancery, and the more speedy distribution of justice in courts of equity," but it was not passed.

March 9. To the Assembly: Transmitting resolutions of the Massachusetts legislature disapproving the Virginia resolution relative to the removal of United States senators.

[10] This suggestion was adopted, and by chap. 90, passed March 24, the overseers of the poor of towns and cities were authorized to provide for the care, in the New York Hospital, of lunatics who were or might become a public charge.

March 10. To the Senate:

"GENTLEMEN.—Pursuant to concurrent resolutions of the legislature, contracts have been made with the christian and pagan parties of the Oneida Indians respectively, for the purchase of part of their lands — copies of which contracts are now submitted to you.

It is necessary that the legislature should make provision by law for fulfilling the stipulations and engagements on the part of the State. [See note 9.]

DANIEL D. TOMPKINS."

Albany, March 10, 1809.

The Senate journal contains the treaties.

March 15. To the Senate:

Objections by the Council of Revision to a bill "to equalize the four great districts of this State."

"The bill is to be considered either as a new apportionment of the Senators, or as a new division of the districts; and in either view, it appears to the Council to be inconsistent with the spirit of the constitution and the public good.

1. By the 4th article of the amendments to the constitution, it is provided, that upon the return of every census, the legislature shall apportion the Senators and members of Assembly; and the legislature did accordingly, on the 1st day of April last, by the act entitled 'An act apportioning the representation in the legislature according to the rule prescribed by the Constitution,' make such apportionment in pursuance of the census taken in 1807. The apportionment having thus been made, this provision in the constitution is complied with, and it ceases to operate until the taking of another census. The same article says also in the like words, that upon the return of every census, the number of the Assembly shall be increased, and

yet it must be obvious that the increase cannot be admitted at any other time than upon the return of the census. The 4th article says nothing about the division of districts. It does not say that the districts shall be apportioned to the Senators, but that the Senators shall be apportioned amongst the great districts; and the true construction of it is, that upon the return of the census, the Senators may be apportioned among the districts as they stand, and not that the districts are necessarily to be disturbed and altered upon every such census. And it is extremely important, both as it respects the security of the constitution and the just rights of the electors which are concerned in the apportionment, that when an apportionment is once made, it should be steadily adhered to until the return of another census. There is no rule for making another apportionment but the census of 1807, and that becomes an uncertain guide for a second apportionment, because the population of the districts has varied in the meantime and that variation increases every year. If a second apportionment may be made now, it may equally be made in any future session, and even in the year preceding the taking of another census, and thus all accuracy in the rule of apportionment would be lost, and the constitutional objects of the census defeated. That the present bill does, in reality, make an entire new apportionment of the Senate, appears from the second and third sections of the bill, which contain the provisions for that purpose. Every general division of the districts necessarily involves in it a new apportionment of the Senators. The one object cannot well be obtained without producing the other, and consequently, public convenience would seem to require, that every general alteration of the districts, whenever the same shall become necessary, should be made at the same time with the general apportionment of the representation.

2. But if the bill could be considered (as its title purports) only as a new division of the districts, according

to the power vested in the legislature by the 12th article of the constitution, it appears to be equally objectionable. That power was given expressly 'for the convenience and advantage of the good people of this State,' and that whenever such alterations are made, public convenience requires that they should not take effect until some future and distant day, so as to give to the people sufficient opportunity to acquire that general information within their new districts, which may be requisite to a judicious choice of their rulers. The present bill is to take effect at the ensuing election. This is evidently too short a period, and the bill may operate as a surprise upon the electors, especially in the Eastern District, which by the bill is made to comprehend very distant countries, which, from their local situation, have hitherto had very little commerce or intercourse with each other. To break up and new model all the great districts, within six or seven weeks of the senatorial election, cannot, in the opinion of the Council, conduce to the public good, or the convenience or advantage of the people. The act of the 4th of March, 1796, presents a valuable precedent upon this subject. It made alterations in the districts far less material than those contained in the present bill, but it provided that the alterations should not go into operation until the ensuing year.

There are other and very inconvenient consequences to which the principle of this bill might lead, and there are abuses to which such a precedent might hereafter be perverted, but the Council deem it unnecessary to trace them. The public good seems to dictate that the great districts should not be new modelled very frequently; that when alterations become necessary, they should, to every practicable extent, preserve the original district character of the Senators elect, and that they should not go into operation very promptly, lest they might affect the suffrages of the freeholders, by distracting their choice, or confounding their efforts to unite in upright and intelligent candidates."

The bill was not passed over the veto.

March 22. To the Assembly:

"GENTLEMEN.— By the act to contribute to the defence of this State, and for other purposes, passed April 6, 1808, it is provided that the person administering the government of this state, shall transmit to the legislature at their next session, an account of the expenditure of the several sums of money thereby appropriated for public objects. No part of the sum of twenty thousand dollars, appropriated by the second section of the aforesaid act has been drawn or applied. The sum of twelve thousand five hundred dollars, drawn from the treasury pursuant to the first section of the said act, has been advanced to the commissioners of fortifications; whose report, together with a summary account of the expenditure of $9504.73, thereof, previous to the 20th inst. together with a specification of the objects to which the same has been applied, you will herewith receive.

Accurate plans of the ground belonging to the state, and of the works referred to in the report of the committee, are also submitted to the examination of the legislature, with a request that after they have been inspected and satisfactorily examined, they may be returned to me.

DANIEL D. TOMPKINS."

Albany, March 22d, 1809.

March 30. The Legislature adjourned without day.

DANIEL D. TOMPKINS, Governor.

The Legislature met on the 30th of January, at which time the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—You are assembled for the purpose of deliberating and deciding on the important concerns of this state, which, by the constitution, are devolved upon you as the immediate representatives of the people. The magnitude of that duty is enhanced at the present juncture by the convulsed state of the civilized world, and by the great political events constantly occurring.

The nations of Europe have persevered, during the past year, in their sanguinary struggle, with increased animosity. Whole districts of country have been desolated; kingdoms subjugated, and hosts of innocent subjects sacrificed. These occurrences present a mournful picture of the rapacity and ambition of princes, whilst they afford a monitory lesson to the American people.

The situation of the United States has been, in the meantime, comparatively happy and enviable; for it hath pleased the Great Disposer of events to ordain peace in our borders, and to crown our year with goodness.

The prosperity of the nation, however, has not been uninterrupted. Connected as the United States are by commercial intercourse with other nations, we could not avoid feeling the shock of the contending powers. At an early period it was feared that our commerce would experience material impediments from a widely extended foreign war; and more especially, as one of the great belligerents controlled the destinies of the European continent, and the

other possessed the means of domineering upon the ocean. But their professions of respect for the rights of others, and their avowed homage to the authority of the law of nations, forbade us to anticipate those gigantic strides which have over leaped the settled principles of public law, which constituted the barriers between the caprice, the avarice or the tyranny of a belligerent, and the rights and independence of a neutral. It would be painful to dwell upon every aggression, injustice, violence and insult, which we have witnessed and experienced for several past years. The interdiction of neutral commerce from a part or the whole of the territories of one belligerent by a declaration of blockade by the other, without actual investment by force, and without a capacity therefor; the imposition of a tax or transit duty on neutral commerce in the ports of one power to legalize its transmission to the adverse power; the violent arrest, from our public and private vessels, of seamen, almost without regard to the place of their nativity; the liability of neutral property to seizure and condemnation by one party in consequence of search by the other of the ships transporting it, and the total prohibition of neutral commerce with one belligerent by the other, without blockade of any description, are amongst the prominent usurpations which have sacrificed much of our property, enslaved many of our citizens, insulted our sovereignty, and almost proscribed neutral commerce from the ocean. Some neutral vessels have been seized, robbed, destroyed or condemned upon frivolous and provoking pretexts, not even justified by the arbitrary and ruinous restrictions above mentioned; and one of our public armed ships has been insultingly attacked, several of her crew killed, and others taken forcibly away; an act acknowledged by the nation whose officer committed it, to be wholly unwarrantable, but which still remains unatoned.

The constant evidences of a desire on our part to maintain a strict and impartial neutrality; the earnest and able

appeals for redress by our rulers to the honor and justice of the belligerents, and our continual remonstrances against their incessant and unprovoked encroachments upon neutral commerce, have all been disregarded or evaded. No revocation of material relaxation of the offensive decrees of France has been obtained. With Great Britain an arrangement was effected in April last, which, at the same time it evinced the impartial and pacific intentions of our administration, and a returning sense of good faith and upright conduct in the cabinet of St. James, diffused a lively satisfaction through the nation, and presaged a speedy restoration of good understanding and harmony between the two countries. But our hopes were blasted, and the wise and patriotic intentions of our rulers, baffled by an unexpected disavowal of the agreement and an unqualified refusal to fulfill its stipulations on the part of England. Since the recall of the minister who negotiated the arrangement, nothing has occurred to brighten the prospect of an honorable adjustment of our differences. On the contrary, instead of evincing an amicable disposition by substituting other acceptable terms of accommodation in lieu of the disavowed arrangement, the new minister has persisted in impeaching the veracity of our administration which a sense of respect for themselves and for the dignity of the nation they represent, forbade them to brook. They adopted towards him on that occasion the most moderate and least irritating course of treatment; a course demanded by his deportment, and meriting the approbation and support of every American, who feels anxious to preserve the honor and independence of his country.

The momentous duty of deciding upon the attitude which the United States shall assume in the present emergency is delegated to intelligent and virtuous agents. In their wisdom we may safely confide; and it becomes us to place a firm reliance on their patriotic exertions to devise such

measures as may be best calculated to promote peace and prosperity, or to provide for the security of our common country in the event of war, for all the efforts of human wisdom directed by the purest virtue in our rulers may prove unavailing without that union, confidence and support which the genius of our government, the spirit of patriotism and the dictates of reason, nature and christianity impose upon the members of the community. If the members and the head be united and act in concert, no foreign power can endanger the life or safety of the political body.

With respect to the internal affairs of this state, it affords me great satisfaction to inform you that more than usual proficiency has been made in improving and extending agriculture and manufactures. The liberal patronage which the legislature has been pleased to extend to domestic manufactures, by loans and bounties, has been attended with the most salutary effect. The enlightened policy of a few individuals has also introduced a breed of sheep which essentially promotes the fabrication of cloths of a superior quality.

It rests with the legislature to decide, whether, by further encouragements, an additional stimulus may not be created, which will enable our citizens to convince foreign nations that we are not dependent on them for manufactures.

The measures which have been pursued under the various laws, providing for defence, will be particularly detailed to you in a separate message. In the meantime, I would remark that about forty-five thousand dollars of the fund appropriated for fortifying the city of New York remains unexpended. A very effective water battery of durable mason work, called Fort Richmond, has been completed during the season, on the west side of the Narrows, and is ready to receive twenty-seven cannon. This battery is capable of sustaining, with inconsiderable additional expense, a second

tier of guns. Two other batteries, each extending on the easterly and southerly sides of the point of Staten Island, have also been formed, and are in readiness to receive platforms and guns. The line of the lower battery is six hundred and seventy feet, and that of the upper four hundred and eighty feet, affording together ample space for eighty guns.

Another battery capable of mounting twelve guns, has been excavated from the hill at an intermediate distance between the last mentioned batteries and the fort described in a communication to the legislature at their last session. A well of one hundred and forty-five feet in depth has been sunk within the contemplated lines of the main work, and a wharf constructed near Fort Richmond for the accommodation of vessels drawing ten feet of water. The whole has been managed gratuitously by five commissioners, to whom, and to the colonel of engineers, the state is principally indebted for the celerity, ability and economy with which that service has been performed. Their report, accompanied with plans of the several batteries, will be submitted to you in a few days by a separate message, and will furnish all the information requisite to enable the legislature to give such further directions on the subject as may be deemed useful and proper.

An official statement of the colonel of engineers will, at the same time, be laid before you, describing the present state of the interior defence of the harbor of New York, so far as relates to the fortifications erecting by the United States. One hundred and sixty-six guns may now be mounted on those works, and they are calculated when completed, to receive three hundred and four guns and ten mortars. The progress which has been made in the purchase of ordnance, small arms and ammunition, and the measures taken pursuant to the act to provide for the defence of the frontiers, will form the subject of a special message.

Ten years will have expired at the next regular session of the legislature, since the laws of the state have been revised; some of them have become obsolete, others have expired, and experience has shown that many of those in force are susceptible of amendment. The report of the decisions of the supreme court, will afford better materials for revisal than were formerly to be obtained; and moreover the statute books have become too voluminous and expensive to be purchased by many citizens and officers who ought to possess them. It is, therefore, respectfully submitted to your wisdom whether preparatory arrangements for that purpose, at the present session, would not conduce to the benefit of the community.[1]

I cannot omit this occasion of inviting your attention to the means of instruction for the rising generation. To enable them to perceive and duly to estimate their rights; to inculcate correct principles and habits of morality and religion, and thus to render them useful citizens, a competent provision for their education is all essential. The fund appropriated for common schools already produces an income of about twenty-six thousand dollars, annually, and is daily becoming more productive. It rests with the legislature to determine whether the resources of this state will justify a further augmentation of that appropriation as well as to adopt such plan for its application and distribution as shall appear best calculated to promote the important object for which it was originally designed.[2]

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1 An act, chap. 150, passed at the next session (April 4, 1811) provided for the revision of the statutes, which resulted in the Revised Laws of 1813.

2 The condition of the common school fund was examined by the Assembly committee, which presented a report on the 14th of March, 1810. The report refers to the act of 1801 for the encouragement of literature by which the sum of $100,000 was to be raised by lottery, one-half of which was to be paid into the treasury for the use of the common schools. The Comptroller was authorized to loan this amount. The common school fund was further augmented from proceeds of unappropriated lands under the act of 1805, chap. 66. The committee say that the Comptroller had loaned in all $114,600,

GENTLEMEN.—At a period of uncommon agitation and embarrassment, it is among the important duties required of us to soar above local and partial views; to cherish and inculcate a disinterested national spirit; and to secure, by every possible means, the blessings of liberty to ourselves and our posterity; and it only remains with me to assure you, that I shall in all things heartily co-operate with the different branches of government, in the necessary measures to promote the general welfare.

DANIEL D. TOMPKINS.

Albany, January 30, 1810.

SPECIAL MESSAGES.

January 30. To the Senate:

Objections by the Council of Revision to a bill, passed at the last session, "to establish surveys in the city of New York, and to grant additional powers to the mayor, aldermen and commonalty of the said city, in relation thereto."

"Because by the third section, the surveyors, when called upon, are to lay out and apportion any lot within

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of which only $7,752 had been repaid, leaving due more than $106,000 of principal, besides a large amount of interest. The committee made some observations on the loose methods pursued in the Comptroller's office in relation to these loans, and recommended more stringent measures for the protection of the fund. It was recommended that all laws authorizing the Comptroller to invest the common school fund be immediately repealed, that the Attorney-General be directed to take proceedings at once for the collection of outstanding loans; that thereafter the fund be invested in bank stock or other reliable securities, and kept always under the control of the State, and that the Legislature take further action to augment the common school fund.

The subject of this report was included in chap. 159, passed April 5, relative to the common school fund, which made provision for its further increase, and authorized the Comptroller to make loans in the stock of certain specified banks, and if no stock should be available, then in first mortgages on real estate, but no person could borrow more that $1,000. Provision was also made for the prompt collection of loans by the Attorney-General, and in case any loans outstanding at the time of the passage of the act should remain unpaid on the 1st of April, 1811, the Comptroller was directed to deliver the securities therefor to the Attorney-General for collection.

any square in such manner as may in their opinion most likely procure equal justice between the parties concerned, and the maps, evidences and vouchers which influenced their decision, and to be recorded and future surveys to be governed by such returns. This new mode of proceeding, does in an indirect way compel the proprietors of lots to exhibit their titles to persons not acting judicially, or to submit to have inferences made to their prejudice from evidence, consisting of an undistinguished mass of affidavits, maps, vouchers, field books, and memoranda collected without legal discernment or judicial authority. This may be productive of discord and litigation even as to freehold estates, long since defined; for the whole of the compact part of the city, lying southward of the line described in the bill, is subject to the provisions thereof, and the fourth section of the bill, declares, that every survey, plan, map and field book made in conformity with the provisions in the bill, shall be considered as matters of record; and shall be final and conclusive, as well in respect to the corporation of the said city, as in respect to all other persons. This whole provision is either rendered nugatory by the 5th section of the bill, or it will have an influence injurious to the rights of private property as established and secured according to the course of the common law, and in either alternative the bill appears to be inconsistent with the public good."

The bill was not passed over the veto.

January 30. To the Assembly:

Objections by the Council of Revision to a bill passed at the last session "for the relief of William H. Devoe."

"Because by the first section of the bill, the said William H. Devoe is authorized to continue the mill dam which he has erected and now occupies in the town of Duanesburgh in the county of Schenectady, notwithstanding by reason thereof the lands of other persons may be overflowed, and

the owners of such lands are compelled to part with the same against their will, at the valuation of appraisers to be appointed by the Court of Common Pleas of the county of Schenectady, by means whereof the property of one individual is taken without his consent and appropriated to private use, without any public object appearing to require or warrant such legislative interposition."[a]

The bill was not passed over the veto.

January 30. To the Assembly:

Objections by the Council of Revision to a bill passed at the last session, "for the relief of Nicholas Hardenburgh, Thomas C. Jansen, and others, and for other purposes."

"1. Because by the first section of the bill, commissioners are appointed to make partition of the real estate of Cornelius S. Jansen, whereof he died seized, among his four children, and the only inducements to the bill appear to be, that two of the said children are infants and the lands to be divided are situated in several counties of this State. The act, entitled 'an act for the partition of lands,' and the acts supplementary thereto, afford the petitioners for the present bill, full and complete provision for all the objects contemplated by the first section of the bill, so far as relates to the partition of the said lands. To legislate in individual cases, without circumstances in any wise peculiar, and in cases already provided for by general laws, appears to the Council to be against sound policy, as well as the public good.

2. Because, by the said first section of the bill, it is enacted, that any deed or deeds of partition, hereafter to be executed by the petitioners, or any of them, for the purpose of perfecting a partition of the said real estate, or any part thereof, according to the partition to be made by

[a] Const. 1777, § 13; 1894, art. 1, § 6; U. S. Const. 5th Am.

the commissioners therein appointed, or any two of them, shall have the same effect as if the person or persons who shall execute such deed or deeds, was or were of full age, at the time of the execution thereof. In obviating a disability in favor of infants, established by law for wise purposes, founded on a presumed want of discretion to manage property advantageously, there is no provision guarding the interest of the infants, by referring the partition then to be made to the investigation of some known and established tribunal, to examine its fairness, justice and regularity, before the infants execute the deeds of partition. In analagous cases there has been a reference to the court of chancery, that court having by the common law the superintendence of infants and their estates; by the present bill the acts of the commissioners, if sanctioned by the infants, are binding and conclusive, and in this respect the 'act for the partition of lands,' has a manifest superiority in point of justice, for by that act a power is given to the supreme court, to set aside the return of the commissioners for injustice or irregularity, acting under the same sanction as the commissioners are required to act by the said bill."

The bill was not passed over the veto.

January 30. To the Assembly:

Objections by the Council of Revision to a bill, passed at the last session, "to establish and confirm the original surveys of the lots in the military tract."

"Because it prescribes a particular rule of evidence of title to lots in the military tract, whereas by the established laws of the land, the title to lots in that tract is founded on the patents respectively issued, and on the evidence of location and construction which those patents furnish; original surveys are now, by the settled rules of law, evidence of the bounds of lots, but like other matters of

evidence, they may be controlled by better proof of the intention of the parties, and the truth of the case."

The bill was not passed over the veto.

January 30. To the Assembly:

Objections by the Council of Revision to a bill passed at the last session, "granting relief in certain cases to the inhabitants of the city of New York, and to the inhabitants of the town of Brooklyn in Kings County."

"Because, if the conveyance across the East River, of the goods, wares, and merchandize, described in the bill, is not interfered with by private rights, its provisions are useless, and if any such rights are claimed or exist, they are appropriately and exclusively of judicial cognizance."

The bill was not passed over the veto.

February 1. To the Assembly: Transmitting the annual report of the Inspector General of staves and heading.

February 1. To the Assembly: Transmitting a resolution adopted by the Massachusetts legislature recommending an amendment to the federal constitution prohibiting an embargo for a longer period than until the expiration of thirty days from the commencement of the session of Congress next succeeding that session in which such embargo law shall have been enacted; also a resolution adopted by the Legislature of Vermont disapproving the Massachusetts proposition on the ground that the whole subject was already under the control of Congress, which could at its pleasure enact, amend, or repeal embargo legislation, and that therefore the proposed amendment would be nugatory; also a resolution adopted by the Legislature of Maryland requesting its senators and representatives in Congress to oppose the Massachusetts proposition.

February 2. To the Senate: Transmitting resolutions adopted by the Legislature of Pennsylvania relative to the Olmstead case, out of which had arisen a conflict of authority, between the federal and State courts. The preamble recited with considerable detail the circumstances con-

nected with the case, and the reasons which actuated the State in objecting to the proposed process about to be issued by the federal court against citizens of Pennsylvania.

The following are the resolutions:

"*Resolved,* That, as a member of the Federal Union, the Legislature of Pennsylvania acknowledges the supremacy, and will cheerfully submit to the authority of the general government, as far as that authority is delegated by the constitution of the United States. But, whilst they yield to this authority, when exercised within constitutional limits, they trust they will not be considered as acting hostile to the general government, when, as guardians of the state rights, they cannot permit an infringement of those rights, by an unconstitutional exercise of power in the United States' courts.

Resolved, That in a government like that of the United States, where there are powers granted to the general government, and rights reserved to the States, it is impossible, from the imperfection of language, so to define the limits of each, that difficulties should not sometimes arise, from a collision of powers; And it is to be lamented, that no provision is made in the constitution, for determining disputes between the general and state government, by an impartial tribunal, when such cases occur.

Resolved, That from the construction the United States' courts give to their powers, the harmony of the states, if they resist encroachments, on their rights, will frequently be interrupted; and if, to prevent this evil, they should, on all occasions, yield to stretches of power, the reserved rights of the States will depend on the arbitrary power of the courts.

Resolved, That, should the independence of the States, as secured by the constitution, be destroyed, the liberties of the people in so extensive a country, cannot long survive. To suffer the United States' courts to decide on state rights, will, from a bias in favor of power, necessarily destroy the federal part of our government; and whenever the government of the United States becomes consolidated, we may learn from the history of nations, what will be the event.

To prevent the balance between the general and state

governments from being destroyed, and the harmony of the States from being interrupted,

Resolved, That our senators in congress be instructed, and our representatives requested, to use their influence to procure an amendment to the constitution of the United States, that an impartial tribunal may be established, to determine disputes between the general and state governments; and, that they be further instructed to use their endeavors, that, in the meanwhile, such arrangements may be made, between the government of the union and of this state, as will put an end to existing difficulties."

Negotiations were to be instituted between the State authorities and the President and Congress for the purpose of settling the difficulties, and the resolutions were also to be transmitted to the several states.

The journals contain a Vermont resolution disapproving the Pennsylvania amendment.

February 7. To the Assembly:

"GENTLEMEN.— The report of the commissioners of fortifications, together with the official communication of the Colonel of Engineers, relative to the works erecting by the United States, are now submitted to you. They are accompanied with an account of the commissioners specifying the particular objects to which the expenditures have been applied. The act making the appropriation for works of defence, expresses a confidence that the advances by the state will be reimbursed by the United States. To accomplish that object and to adjust the terms upon which the transfer of the property and works on Staten Island shall be made to the United States, further legislative provision is necessary.

I also avail myself of this occasion to transmit to you my account of monies drawn and expended pursuant to the provisions of the several acts authorizing the purchase of ordnance, small arms and ammunition. Two contracts have been made for small arms, the one for the manufacture of two thousand at New Haven, and the other for the

manufacture of one thousand at Pittsfield, in Massachusetts. Samples of the muskets delivered under each contract are submitted to the inspection and examination of the members of the legislature. Three thousand muskets are still to be purchased, and should no objections be made to the samples submitted, additional contracts will be entered into for that number.

DANIEL D. TOMPKINS."

Albany, February 6, 1810.

February 20. Thanking the Senate for its address, the Governor said:

"The measures of the general government, in repelling foreign injustice, will be more or less efficacious according to the degree of confidence and support imparted by the citizens at large. It is, therefore, to be hoped, that at this momentous period, they are generally and deeply impressed with a just sense of the rights and honor of their country, and will rally round its standard in opposition to the injustice and insults of the belligerents. The promptitude and firmness with which the senate have avowed their opinion upon our foreign relations, and their confidence in, and determination to support the administration of their own country, is a renewed evidence of their wisdom and patriotism, and worthy of general imitation."

February 20. To the Assembly: Transmitting the annual return of the commissary of military stores.

February 24. Replying to the Assembly's address, the Governor said:

"GENTLEMEN.— Being desirous that the intercourse between the different branches of the government, should be conducted with respectful urbanity and dignified decorum, and fully determined that no consideration shall ever induce me to depart from that line of conduct, it cannot be expected that I should notice all the expressions contained in this answer of your honorable house.

At the commencement of the present important session of the Legislature, it became my duty to submit to them such views of the interesting affairs of the nation, and of the conduct of its administration, and to inculcate such principles of national union, as appeared to me to be inseparably connected with the interest, honor and peace of our common country. A constitutional injunction, as well as a sincere attachment to the rights and independence of my country, imposed that duty. Fully persuaded that the conduct of the national government has been distinguished by the purest principles of patriotism, I cannot subscribe to the justice or propriety of your intimation, that our negotiations with either of the belligerents have been improperly managed, or unduly concealed. Nor can I suppose that you can justly complain that the aggressions upon our national rights, have not been met in an honorable and dignified manner; as recourse has been had to every mode of redress, except an appeal to the sword, against which you appear to entertain the most decided opposition. If the American people are just to themselves, and true to their government, we have nothing to apprehend from the arts or the arms of any foreign power. Let us not by inculcating distrust, or exciting suspicion against the national administration, weaken their efforts in the support of our rights. But with a humble reliance on the blessings of the Supreme Being, and with a firm determination to maintain the honor of our country, let us unite our exertions to invigorate the arm of the national government, and to enable it to repel with energy the aggressions of every foreign power.

Upon examining the report of the secretary of the treasury, it will be found that the suggestion of loaning three or four millions of dollars, is not for the purpose of enabling that department to defray the ordinary expenses of the government, or to pay the annual appropriation of eight millions of dollars, towards discharging the national

debt, but to meet any expenses for the navy and military departments, above three millions of dollars. And when we reflect that the diminution of income is principally to be ascribed to those aggressions on neutral commerce, which excite the indignation and resentment of the assembly; and that without direct or internal taxation, or loans, and under unprecedented difficulties and embarrassments, the government has been enabled, within the last nine years, to extinguish nearly thirty-five millions of the national debt, and to pay upwards of six millions, under the British treaty and Louisiana convention, and yet to retain a surplus in the treasury; and when we contemplate the immense resources to be derived to the nation, from more than six hundred millions of acres of public land, we must be perfectly satisfied that we are able to meet every emergency which the injuries and insults of any foreign power may render unavoidable. Should we therefore be driven to the necessity of expending even forty millions for the purpose of asserting our rights and maintaining our independence, the national debt would not then be greater, nor the finances of the country less flourishing, than they were previous to the period I have mentioned.

While we acknowledge with unfeigned gratitude, the overruling goodness of Divine Providence, it becomes us to implore him to continue his signal blessings, and to endow us with wisdom to discern, and virtue to pursue the real interest and happiness of our country.

DANIEL D. TOMPKINS."

Albany, February 24th, 1810.

February 26. To the Senate: Stating that the Christian party of Oneidas had offered to sell a tract of land described in an accompanying memorandum.[3]

[3] Chap. 51, passed March 12, 1810, made an appropriation to the Governor for the purchase of a certain tract of land belonging to the Christian party of Oneida Indians, in chap. 154, passed April 5, recited the purchase of this land and provided for the survey and disposal of it.

March 8. To the Senate:

"GENTLEMEN.—The expense and payments attending the treaty with the Christian party of the Oneida nation of Indians, amount to three thousand fifty-five dollars, and two cents, for the reimbursement of which, it is necessary provision should be made by law. The treaty, duly executed and acknowledged, is herewith sent, for the inspection of the members. [See note 3.]

DANIEL D. TOMPKINS."

Albany, March 7th, 1810.

April 2. To the Senate:

Objections by the Council of Revision to a bill "for the relief of the minister, elders, and deacons of the Reformed Dutch Church in the town of German Flatts in the county of Herkimer."

For its reasons the Council referred to and quoted the veto of the New Utrecht church bill, February 24, 1809. *Ante*, p. 645. The bill was not passed over the veto.

April 4. To the Assembly: Transmitting the annual return of the militia.

April 6. The Legislature adjourned without day.

1811. JANUARY. LEGISLATURE, THIRTY-FOURTH SESSION.

DANIEL D. TOMPKINS, Governor.

The Legislature met on the 29th of January, and on the same day the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—In addressing you for the first time since my re-election to the executive department, permit me to express my grati-

tude for the recent proof of confidence which has been manifested towards me, and to renew the assurance, that my best efforts shall be devoted to a faithful discharge of the important trust.

It would have afforded me sincere gratification to have been enabled to announce to you, on this occasion, such a favorable change in our foreign relations, as the justice of our claims and the impartial and pacific attitude we have uniformly maintained, authorized us to anticipate.

Pursuant to the powers vested by law in the president of the United States, he has notified, by proclamation, the revocation of the French decrees violating our neutral commerce. This auspicious and important event, has not, however, been accompanied by the restoration of the American property which had been previously seized and confiscated in the ports of France, and in those under her control.

The British orders in council, which had for their basis the obnoxious decrees of Berlin and Milan, and which purported to be merely retaliatory, have not yet been annulled, notwithstanding the solemn official assurance that they would be abandoned whenever France retracted her decrees. Instead of giving us a friendly intimation that this assurance would be executed with good faith, the British Secretary in his correspondence of August last, with our minister, has superadded the additional preliminary of the restoration of neutral commerce to the condition in which it stood at the promulgation of the French decree. The interposition of this vague and impracticable condition, and the unsatisfactory import of the correspondence of that government generally preclude the hope of our obtaining a relinquishment of the British orders upon any acceptable or honorable terms. We have also little reason to expect any adequate atonement for the insults and injuries received from that quarter. The correspondence which has taken place during the last year with both gov-

ernments, has been laid before the public, and amply refutes the illiberal imputation of partiality in the administration towards either of the belligerents. We have always had the best reasons for reposing the utmost confidence in the wisdom and virtue of our national administration; and I cannot hesitate to believe that every American, who has not transferred his affections to a foreign government, will feel the same patriotic sentiment, after a candid and impartial examination of that correspondence; and when he reflects that the departure of both belligerents from all the maxims of national law has been so palpable and uniform, that they themselves have ceased to attempt a justification by those maxims, but resort to trite and falacious subterfuges to extenuate their atrocities, he will not find it possible to reconcile himself to a justification of their accumulated insults and injuries; nor will his judgment, his feelings or his duty permit him to clamour against the measures, or to violate the laws of his own government. What course will be deemed by our national rulers the most expedient for the present emergency I shall not venture to predict; but whether the prohibition of intercourse, or measures of a more energetic complexion be adopted, I trust every good citizen will reflect that patriotism, morality, and the precepts of religion enjoin on him obedience and support.

The precarious situation of foreign commerce, and a retrospective view of the multiplied violations of our sovereignty and neutral rights, render the astonishing progress which has been made in the improvement and extension of domestic manufactures, a source of lively satisfaction. A beneficent providence has endowed our country with an abundant supply of raw materials of every description, and our citizens are eminently distinguished for persevering industry and for great ingenuity in all mechanical arts. The returns of the census recently taken prove not only the unexampled increase of population in the United

States, but furnish also evidence of the flourishing condition of our manufactures. Let us extend to them the utmost encouragement and protection which our finances will admit, and we shall soon convince the belligerents of Europe, to whom we have been extensive and profitable customers, that their mad and unjust policy towards us will ultimately recoil upon themselves, by giving to our industry, our resources and our policy, a new direction calculated to render us really independent.

In recurring to the local events which have intervened since the last session of the legislature, I notice with much sorrow, the death of the late lieutenant-governor of this state. That distinguished patriot and citizen departed this life soon after he had experienced a flattering testimony of the continued confidence and affection of his fellow citizens. It is not for me here to detail the history of his long and useful life, or to pronounce his eulogy. But I owe it to private friendship and to the intimacy of our official relations, to say, that my late venerable associate, rendered to his country eminent services in the great variety of public stations in which he was called; and what sheds still brighter luster on his memory, he merited and attained the rare felicity of being universally respected and esteemed in private life, for benevolence, integrity and exemplary piety. Whether that part of the constitution which guards against a vacancy in the executive chair,[a] does not point out the expediency and necessity of legislative provision for the choice of a successor in cases like the present at the succeeding anniversary election, is submitted to your wisdom.[1]

In the last public communication which I had the honor of making to the legislature, the propriety of adopting

[a] Const. 1777, § 20.

[1] John Broome, Lieutenant-Governor, died in August, 1810, and by chap. 3, passed February 11, 1811, provision was made for the election of a successor at the next "anniversary election."

preparatory arrangements for a revision of the statutes of this state was suggested for their consideration. You must indulge me in again inviting your attention to that subject. A hope that you will concur with me in the expediency of a revision of the laws, has induced me to dispense with proposing sundry needful alterations in particular statutes.[2]

An account of the proceedings which have taken place in the erection of frontier arsenals, the purchase of small arms, ordnance and ammunition, the erection of fortifications and the expenditure of several specific appropriations, is reserved for the subject of a special communication.

I am informed that the report of the commissioners appointed to explore the westerly parts of this state, with a view to ascertain the practicability and probable expense of canal communication between the waters of the Hudson and Lake Erie, will shortly be presented to you. The importance of that subject highly merits, and I doubt not will receive your early and serious attention.[3]

The mode of applying the fund set apart for the encouragement of common schools, and the means of adding to the liberal patronage which has been already extended for the promotion of learning and the consequent advancement

2 Chap. 150, passed April 4, provided for a revision of the statutes.

3 The canal commission was appointed by a concurrent resolution adopted by the Legislature of 1810. The commission presented its report to the Legislature on the 2d of March, 1811, estimating the expense of constructing the projected canals from Hudson river to Lake Erie and Lake Ontario at $5,000,000, and suggesting that the Federal government be invited to aid in the enterprise. Following this report a bill, introduced by DeWitt Clinton, was passed April 8, chap. 188, providing for the internal improvement of the State. The act appointed commissioners, who were, among other things, empowered to make application to the government of the United States, or to the Legislature of any State or Territory to co-operate and aid in the canal project. The commissioners were also authorized to investigate questions relating to the acquisition of land for the canal, to ascertain whether the interest of the Western Inland Lock Navigation Company could be purchased, and report to the Legislature at its next session.

of the cause of morality and religion, will form part of the interesting matters which ought to attract your notice.[4]

GENTLEMEN.— Notwithstanding the difficulties we have encountered, and the losses we have experienced during the sanguinary and desolating wars of the old world, yet we have reason to rejoice that we are this day a prosperous and happy people. With a firm reliance upon that Providence which has conducted us to liberty and to independence, let us rise above all improper considerations, and devote ourselves with one heart and one mind to the important duties before us. May all our deliberations be conducted with harmony and wisdom, and may they terminate in the advancement of the public welfare.

DANIEL D. TOMPKINS.

Albany, January 29, 1811.

SPECIAL MESSAGES.

February 6 and 8. Thanking the Senate and Assembly respectively for their addresses.

February 12. To the Senate:

"GENTLEMEN.— I have delayed until the present time, a communication relative to the disposition of the property and fortifications on Staten Island, belonging to this State, in hopes of being able to accompany it with the annual report of the commissioners of fortifications. That property has been deemed by many to be an eligible site for the military academy of the United States, in case it should be removed from its present situation; and as the permanent establishment and endowment of that institution is now a subject of discussion in Congress, I beg leave to suggest the propriety of authorizing a cession to the United

[4] Chap. 246, passed April 9, authorized the Governor to appoint a commission composed of five persons "to report at the next meeting of the Legislature, a system for the organization and establishment of common schools, and the distribution of the interest of the school fund among the common schools in this State."

States upon such terms as the legislature may deem proper; so that in case Staten Island should be selected for the site of the military academy, adequate power may be vested somewhere to negotiate without delay the terms of a transfer to the United States for that purpose.[5]

DANIEL D. TOMPKINS."

Albany, February 11, 1811.

February 12. To the Senate:

"GENTLEMEN.—A proposition has been made in behalf of the Seneca Indians for the sale to the state of the islands in Niagara River between Lake Erie and the falls. I submit to the legislature the propriety of making the provision by law for the purchase of those islands, if it can be effected upon terms compatible with the state. An appropriation of about three thousand dollars will probably be necessary to accomplish the object.[6]

DANIEL D. TOMPKINS."

Albany, February 12, 1811.

February 12. To the Assembly: Transmitting the annual report of the Inspector General of staves and heading.

February 25. To the Senate:

"GENTLEMEN.—The christian party of the Oneida nation of Indians have made overtures for the sale of certain parts of their reservation upon terms which appear ad-

[5] About fifty acres, with the fortifications thereon, situated in the south-eastern part of Staten Island, were ceded to the United States by chap. 93, passed March 30, to be held by the United States "as long as the principal military academy of said United States shall be established, suitably endowed, and continued on said island." Chap. 64, passed March 2, 1826, ceded to the Federal government about two hundred and twenty acres of land at West Point. This became the site of the national military academy.

[6] Chap. 37, passed March 8, 1811, authorized the Governor to purchase from the Seneca Indians the islands in the Niagara river within this State between Lake Erie and the falls, and the act appropriated $3,000 for that purpose.

vantageous to the interests of the state. Should the legislature deem the purchase to be advisable, it will be necessary that a law be passed authorizing a treaty for that purpose, to be made; and making an appropriation of one thousand dollars to meet the payments which will be required upon the execution of the treaty.[7]

DANIEL D. TOMPKINS."

Albany, 25th Feb. 1811.

February 27. To the Senate: Transmitting a letter from the comptroller and a report from the lottery managers relative to the lottery for the benefit of Union College.[8]

March 2. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

March 4. To the Assembly:

"GENTLEMEN.—The enclosed communication from the department of state, relative to proposed amendment of the constitution of the United States is recommended to your consideration.[9]

I cannot omit this opportunity of reminding you that on the 27th of January, 1800, certain resolutions of the legislature of Vermont proposing an amendment to the constitution of the United States, were transmitted to the assembly of this State. On the 7th of March, in the same year, an amendment proposed by the Legislature of Virginia, was likewise submitted to the Assembly. Resolutions of

[7] Chap. 25, passed February 27, authorized the Governor to purchase from the christian party of the Oneida Indians such part of their reservation as they might desire to sell, and appropriated $1,000 for this purpose.

[8] Chap. 83, passed March 29, was intended to provide for the punctual payment of the prizes in Union College Lottery Number 2.

[9] New York did not ratify the proposed amendment relative to titles of nobility. Several States did not act upon it. Twelve ratified it, but the ratification of thirteen was necessary to secure its adoption. The Assembly, on the 29th of March, disapproved the resolutions proposed by Virginia, Pennsylvania, and Massachusetts.

the respective legislatures of Pennsylvania and Massachusetts, proposing different amendments, were also laid before the senate and assembly of this state on the first day of February, 1810. I have not been made acquainted with any legislative notice of or decision upon either of the proposed amendments. The papers accompanying this message with those of similar import heretofore communicated will show the respect with which the proposed alterations of the constitution of the United States have been treated in other states; and it is respectfully suggested whether a suitable regard to the recommendations of important states, as well as the interesting nature of the alterations proposed, do not require that some further notice and consideration be bestowed by the legislature of this state upon the matters communicated by the before mentioned messages.

DANIEL D. TOMPKINS."

Albany, March 4, 1811.

The following is the proposed amendment to the Federal constitution referred to in the Governor's message:

"If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them."

March 13. To the Senate:

"GENTLEMEN.— By virtue of the authority granted by the act of the legislature of this State, entitled 'an act making further provision for the erection of an arsenal in the city of New York, and for other purposes,' passed Nov. 8th, 1808, I have caused the gores of land therein mentioned to be sold for the sum of fourteen thousand

and eighty-three dollars and eleven cents. That sum has been partly expended, pursuant to the fifteenth section of the supply bill of 1809, in the extinguishment of a balance of one thousand seven hundred and thirty-three dollars and seven cents and a half, due the commissary of military stores upon the account of expenses in erecting a powder magazine in the city of New York, and in the payment of a balance of one thousand six hundred and forty-four dollars and ninety-two cents, due to me upon the arsenal account, previously audited by the comptroller, which last balance was directed to be repaid out of the proceeds of the sale, by the act first above mentioned. In consequence of those two payments the residue of the consideration money has proved insufficient to complete the arsenal and to erect and finish the laboratory, work shops, keeper's dwelling, with fences, &c; but they have, nevertheless, been finished at an expense of one thousand two hundred and thirty-four dollars and nine cents, beyond the proceeds of the said sale; for the payment of which balance legislative provision is requested. I beg leave also to observe that the land upon which the arsenal and appurtenant buildings in New York are situated, has been, as I am informed, assessed for the expense of purchasing the requisite ground for the street through which the contemplated canal is to run. The same act which may direct the payment of the preceding balance, may also with propriety provide for the payment of the assessment for Canal street.

The purchase of two thousand stand of small arms, contemplated by the seventeenth section of the supply bill of 1807, has been effected. The arms were manufactured by Mr. Eli Whitney of New Haven, in the state of Connecticut, and are, in the opinion of competent judges equal if not superior to any imported arms. The cost of the two thousand has been twenty-six thousand dollars. The manufacture and delivery of an additional quantity of two

thousand muskets of the same quality has been contracted for by Mr. Whitney. They will be delivered in the course of the present year. The last mentioned contract and also one entered into with Mr. Pomeroy of Pittsfield, in Massachusetts, was made pursuant to the act authorizing the purchase of an additional quantity of ordnance, arms and ammunition, passed April 8, 1808. A considerable part of the arms contracted for with Mr. Pomeroy has been received. The advances upon the two last mentioned contracts exceed thirty thousand dollars. The appropriations heretofore made will however be sufficient to meet all further payments upon those contracts and for other military purposes.

In pursuance of the authority given by the act of 1808, a large quantity of nitre was purchased and a contract was made for manufacturing it into powder. It was previously ascertained that the purchase of the materials, added to the contract price for manufacturing it, fell short of the price at which powder could be purchased, and that the quality of powder manufactured at New Lebanon, in this state, was equally good with that which could be purchased at market. By contracting for the manufacture of powder there was not only a saving to the public, but at the same time encouragement was given to the enterprising proprietors of a powder manufacture within our own state. The nitre purchased was accordingly delivered to the contractors, Messrs. Tilden, Patterson & Co. of Columbia County, and the principal part thereof was manufactured into powder and delivered to the assistant commissary in Albany. But before the whole was delivered an unfortunate explosion destroyed part of the manufactory and with it some of the property belonging to the state. That accident has deprived the manufacturers of the power to complete a delivery of all the powder which the nitre would have produced, and I therefore respectfully submit to your wisdom the propriety of directing an inquiry into

the circumstances of the loss and of making such provision in the premises as will be just and equitable.[10]

Since the last communication which was made to the Legislature relative to the proceedings under the act to provide for the defence of the northern and western frontiers, deposits, or arsenals have been erected in Onondaga; in Plattsburgh, Clinton county; in Rome, Oneida county; in Watertown, Jefferson county; and one in Elizabethtown, Essex county, has been begun, but on account of the sickness and absence of the principal workmen, could not be finished the last season. In the course of the ensuing summer that will be completed, and deposits in Genesee and St. Lawrence counties will also be erected, which will close the duties enjoined by the last mentioned act, and the law amendatory thereof, passed the 24th of February, 1809.

The quantity of the land contemplated by the act relative to fortifications, passed the 3d of February, 1809, has been purchased for seven thousand and five hundred dollars, which, with thirty dollars for the expense attending the purchase, has been paid, and the account therefor settled. The other proceedings which have taken place, since the last session of the legislature, and the measures which it is contemplated to pursue, are detailed in the report of the commissioners herewith submitted.

The annual report of the commissary of military stores is also herewith communicated. It will show that the state is now supplied with an adequate part of field artillery, fit for service; and that when the small arms now manufacturing are received, the supply of muskets and ammuni-

[10] By chap. 246, the Governor was authorized to investigate the cause of the explosion at the New Lebanon powder mill, and if satisfied that the explosion was not caused by the negligence or design of the proprietors or their agents or servants, a certificate, stating that fact was to be filed by him with the Comptroller, and the proprietors were thereupon to be exonerated from any liability for the loss of property owned by the State.

tion will be amply sufficient to equip as large a detachment of the militia of this state, as will probably ever be called into service at one time. In support of the recommendation of the commissary for the erection of a powder magazine at some place near the city of Albany, I take the liberty of stating that the powder which has annually been distributed amongst the artillery companies of the eastern and western districts has generally been transported from New York to Albany and deposited in the arsenal here until called for. During the last summer a fire broke out in the vicinity of the arsenal which excited such alarm in the minds of the neighboring inhabitants, that I felt it my duty to order the powder to be immediately removed from the arsenal, and obtained permission to deposit it temporarily in the magazine situated in the public square. I have, however, been informed that apprehensions are already entertained about the danger to the city from that magazine, and it is not improbable that we shall be compelled shortly to remove the powder belonging to the state to some other place more remote from the city. Under these circumstances I concur in recommending an appropriation for building a magazine in some safe and convenient place, where the powder and ammunition to be distributed amongst the companies of artillery in the eastern and western districts, and to be used upon an emergency by the militia in the northern parts of the state, may be permanently and securely deposited.[11]

DANIEL D. TOMPKINS."

Albany, March 11, 1811.

March 18. To the Assembly: Transmitting the return of the militia.

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11 Chap. 246, appropriated $5,000 for the erection of a powder magazine near Hudson river, either in the county of Albany or the county of Rensselaer.

March 21. To the Assembly:

ALBANY, *March* 20, 1811.

"GENTLEMEN.—I understand that a bill is before you providing for the appointment of an agent instead of an attorney for the Onondaga Indians. It therefore becomes proper for me to mention to you at this time, that at an interview between the commissioners on the part of the State and the chiefs of the Onondagas, in February last, the latter complained of the inconveniences they experienced for the want of an agent resident amongst them. The reasons assigned by them were satisfactory to the commissioners, who stated in their report the propriety of complying with the request. At a talk which I had with the Onondaga chiefs, a few days afterwards, they repeated the complaint, and earnestly urged the appointment of an agent resident amongst them, in whom they had confidence, and with whom they might advise and consult in their difficulties, without the trouble, loss of time and expense of travelling a considerable distance. They were answered that although their request was reasonable, yet the existing laws confined the appointment to a law character; but that the propriety of amending the law, so as to admit of a compliance with their request, would be submitted to the legislature. The Onondaga Indians are remarkably sober, peaceable and well behaved, and their representations are entitled to much consideration. It is to be regretted that the necessity of their having an agent resident amongst them, who may act as their friend and guardian upon every emergency, arises principally from the numerous and unprovoked trespasses and injuries which evil-minded white persons commit upon the property and persons of those inoffensive Indians.[12]

DANIEL D. TOMPKINS."

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[12] Chap. 79, passed March 29, abolished the office of attorney for the Onondaga Indians, and provided for the appointment of an agent for them.

March 23. To the Assembly:

Objections by the Council of Revision to a bill "for the relief of the representatives of Andrew Jones, deceased."

"Because, the bill authorized the guardians of infants to dispose of the estate of their wards without any other restraint than the certificate, which it provides shall be given by the surrogate of Orange county, that in his opinion such disposition is necessary, and that he approves thereof and of the conveyances to be by them made, without prescribing the mode in which, or the evidence from which, such necessity or benefit is to be deduced; thus departing from the usual provisions in such cases, of committing the superintendence of the trust to the court of chancery, and thus warranting a total alienation of the estate of infants in a case, in which by the 9th section of the act, entitled 'an act to raise money to drain the drowned lands in the county of Orange,' infants are authorized to redeem when they attain full age, a case somewhat similar to a lien by mortgage."

The bill was not passed over the veto.

March 30. To the Assembly:

Objections by the Council of Revision to a bill "to prevent frauds at elections, and for other purposes."

"Because, by the provision in the first section of the said bill, any person who shall, among other things, swear that he is twenty years of age, may vote for members of assembly, thereby allowing minors to vote for members of assembly; whereas, by the constitution of this state, it is ordained, that all male inhabitants of full age, and who possess the other qualifications therein mentioned, shall alone be entitled to vote for members of assembly."[b]

The bill was not passed over the veto.

[b] Const. 1777, § 7.

April 5. To the Senate:

Objections by the Council of Revision to a bill "to prevent frauds at elections, and for other purposes." [13]

"Because the description of person of color, who is required to produce a certificate of his freedom at all elections, is too vague and uncertain to afford a determinate test, either as presented to the eye, or as applied to the quality of the blood, which comprehends all the gradations of the mixed races between the African black and the clear complexion of the white man and even beyond it, as in that sense the stain is indelible. Thus imposing on many citizens, whose ancestors have uninterruptedly enjoyed the elective franchise under the colonial as well as this state government, and to whom that right has been transmitted with their freeholds, the humiliating degradation of being challenged in consequence of a supposed taint, and being excluded from voting in common with their fellow citizens, on their own oaths, and thus exposing electors to wanton insult and contumely, merely on account of their complexion, whether produced by the accidental circumstances of birth, climate or disease, while in the act of exercising the noblest right of a freeman.

2. Because the bill selects a particular description of persons who are, under the constitution and laws of the state, entitled to the elective franchise, many of whom were born free, and imposes on them restrictions and limitations to the exercise of rights to which they are now entitled in common with other citizens of this state — and because no adequate means are afforded them to restore themselves to the rights and privileges of which by the bill they are deprived, inasmuch as there is no provision for compelling the attendance of witnesses before the officers authorized

[13] This bill was not passed over the veto, but another act "to prevent frauds and perjuries at elections, and to prevent slaves from voting," was passed, and became a law, chap. 201, on the 9th of April.

to take the proof of their freedom — thus subjecting the important right of voting at an election to the will and pleasure of others, and who may in many cases be interested in withholding the requisite evidence of freedom.[c]

3. Because heretofore it has been assumed as a principle, that every male citizen, of full age, possessing the other qualifications to vote, required by law, was presumed to be a freeman, until the contrary appeared. In the present bill a different principle is established, to wit: that all black men, and men of color are presumed to be slaves until they prove that they are free. A mode of proof is prescribed of a nature different from that heretofore adopted in relation to the qualification of electors in other cases — their own oaths are not to be received nor are they permitted to produce proof to the inspectors. They must produce their proof to other tribunals, and two several certificates must be obtained before they can be permitted to vote. Many black men and men of color in this state were born free, and many have been manumitted in the manner sanctioned by our laws. These men are scattered through the State, and many of them undoubtedly reside in parts remote from the places where they were born or manumitted. No doubt can be entertained that this act would not be known to many of those interested in its provisions in time to enable them to procure the certificates therein required. This bill, before it goes into operation, ought not only to be brought to the knowledge of the inspectors of every town, so as to guard against fatal errors — but it should also be brought to the knowledge of all those whom it essentially affects, in such a reasonable time before the election as to enable them to procure and exhibit the evidence of freedom and procure the certificates therein stated. No case short of absolute necessity would justify the passage of a bill which may disfranchise even for one year, any portion of the consti-

[c] Const. 1777, § 13; see also U. S. Const. 14th Am.

tutional electors of this state. Not an instance is recollected, neither is any believed to exist, when such a radical change in the election laws has been made so short a time before the election. In the year 1809, a bill passed the honorable the senate and assembly, entitled 'an act to equalize the four great districts of this state,' which came to the council of revision more than seven weeks before the election. The council objected to the bill, and one ground of objection was, that it might produce great public inconvenience. The council for these reasons consider this bill as a violation of principle, dangerous in precedent and against the public good."

April 5. To the Assembly:

Objections by the Council of Revision to a bill "for the relief of the representatives of William Philips."

"Because it authorizes the guardians of the infant children of William H. Philips, deceased, to sell the real estate of the said children, without any direction as to the time and mode of the sale, and without giving security to apply the monies arising on final sale for the benefit of the children, and without subjecting the guardians to any judicial control in the execution of their trust. Such an unchecked and unlimited discretion in guardians is without precedent and contrary to the uniform practice of the legislature in like cases, and is dangerous to the rights of infants."

The bill was not passed over the veto.

April 5. To the Assembly:

Objections by the Council of Revision to a bill "for the relief of James Ford."

"Because by the recital to the said bill, and by the petition and documents accompanying the same, it appears that ten lots of land in the military tract have been sold

by Ebenezer R. Hawley, late sheriff of the county of Onondaga, on an execution issued out of the supreme court of judicature of this State, for collecting 807 dollars, 34 cents, for the trifling sum of sixteen dollars, and that since the sale there has been a lapse of nearly eight years. To permit a mere by-stander, though a deputy of the said sheriff, but who did not make the sale, under circumstances which afford such strong evidences of fraud or unfairness now to execute a deed to carry the sale into effect, appears to the council to be highly improper. No satisfactory reason has been given, why the deed was not executed by the sheriff; and at this late day it is to be presumed that some good cause existed for his omission or refusal. The objection derives additional force from the consideration that the present bill appears to have been passed solely upon the representation of James Ford, the plaintiff in the said execution, and the purchaser of the said lots, without the knowledge of the defendants against whom the said execution was issued."

The bill was not passed over the veto.

April 9. The Legislature adjourned without day.

1812. JANUARY. LEGISLATURE, THIRTY-FIFTH SESSION.

DANIEL D. TOMPKINS, Governor.

The Legislature met on the 28th of January, when the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—The approaching crisis of our national concerns, and the arduous and diversified duties of revising the whole system of

statute law, upon which the peace, the happiness, and the destinies of nearly one million of free citizens may depend, give to the session upon which you have just entered, more than ordinary solemnity and interest. It becomes us, therefore, to advance to its cares, with minds untainted by party acrimony, unswayed by selfish and interested motives, and with our aspirations of praise and thanksgiving to the Great Preserver of nations to mingle a humble and devout supplication for his guidance and approbation in the accomplishment of the task before us.

In my communication to the representatives of the people at their last meeting, I had the honor to revert to the then state of our foreign relations, and to note the accumulated injuries which had been inflicted upon us by the powers of Europe. I shall, therefore, forbear to repeat the disgusting detail, on the present occasion.

Nothing has occurred to alter our relative situation with France since the last session of the legislature. One item of complaint however, has been expunged from the long catalogue of British wrongs, whilst fresh aggravations and insults have been substituted in its stead. The almost forgotten topic of an attack upon the frigate Chesapeake has been lately revived by an unexpected tender of reparation, which has met the acceptance of our national rulers.

An affront calculated to excite equal sensibility, is to be found in the late assault of the Little Belt upon the frigate President, mitigated, to be sure, by the consoling reflection that it was bravely and nobly chastised upon the spot.

Although accumulated evidence of the actual suspension of the operation of the obnoxious decrees of France, has been submitted to the British cabinet, we are still doomed to witness a persistence in her orders in council, of which the edicts of Berlin and Milan were the pretended and ostensible basis, in defiance of a solemn stipulation to the contrary; and to be the victims of an increased rigor in their execution, which has given the decisive and ultimate blow to our neutral commerce.

It would be painful to dwell upon every item of aggression and insult which swells the list of our grievances. The precise points of difference are stated, and luminously discussed in the documents which have recently been submitted to congress by the national executive. These are so universally and well understood, and the merited confidence in the wise and patriotic managers of national concerns has been so thoroughly confirmed, as to have produced an union of feeling and sentiment in the nation, seldom before witnessed; and it furnishes a source of conscious pride and satisfaction in every American bosom to be convinced that whatever may be our local and domestic differences, we shall be an united and formidable people, upon all questions which involve our national existence and privileges, or which affect the vital principles of independence.

Experience has at length taught us the feeble reliance which is to be reposed on appeals to the veracity, the magnanimity or the justice of monarchs, and has dissipated every remaining gleam of hope that our neutral rights will be suitably respected. The consequent unanimity and spirit which inspire the nation, and which have dictated the late measures of congress, show a determination to enforce respect for our rights and sovereignty at every hazard.

It therefore behoves the state of New York to clothe herself in armour, and to stand prepared for the approaching contest. The security of her valuable and exposed maritime frontier on the south, and the protection of her inhabitants upon the extensive borders of the north and west, challenge our anxious solicitude and united services.[1]

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[1] Chap. 139, passed June 12, contained various provisions relative to the defence of the frontiers, the establishment and maintenance of military forces, the completion of fortifications, the erection of arsenals, and the distribution of arms.

The documents now communicated, with others which will be laid before you by special message in a few days, will furnish full and accurate information of the number and equipment of the militia, of the extent and distribution of the military stores, and of the situation of our fortifications and military deposits.

With respect to the militia, the most flattering improvements in discipline and equipments have been universally exhibited both by the officers and privates. The introduction of military schools into several of the counties, has contributed materially to excite ambition and a spirit of emulation. We may repose unlimited confidence in the patriotism, gallantry and efficacy of the militia, whenever the honor and safety of the country shall require their services. The organization established by the act of 1809 has been found to be satisfactory and judicious in most respects. It is, however, essentially defective in one or two particulars. It prescribes no limitation or guide to the jurisdiction of military courts, nor is there in it any designation or definition of what shall constitute military offences, nor any rules or regulations for the practice and proceedings of those tribunals. The remedies proposed for these, and for other omissions and defects which practice has discovered, will be specified in a special report of the adjutant-general, which will be laid before you previously to the revision of the militia laws.

The revision of our code of laws will furnish you with opportunities of making many beneficial alterations. To devise the means for the gradual and ultimate extermination from amongst us, of slavery, that reproach of a free people, is a work worthy the representatives of a polished and enlightened nation.[2]

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[2] The Assembly committee which had under consideration this part of the Governor's speech, and the memorial from the New York Society for promoting the manumission of slaves, presented the following report on the 21st of February:

Allow me here to observe that the law which authorizes the transportation of slaves convicted of offences, is very generally considered impolitic and unjust; impolitic, because it cherishes inducements in the master, to whom alone those unfortunate creatures can look for friendship and protection, to aggravate, to tempt or to entrap the slave into an error; to operate upon his ignorance or his fears, to confess a charge, or to withhold from him the means of employing counsel for defence, or of establishing a reputation, which is frequently the only shield against a criminal allegation. This inducement will be peculiarly strong, where the slave is of that description, the sale of which is prohibited, for a conviction will enable the master to evade that restriction, and to make a lucrative disposition of what might otherwise be a burthen to him. It is unjust because transportation is added to the full sentence which may be pronounced upon others. To inflict less punishment for the crimes of those who have always breathed the air of freedom, who have been benefited by polished society, and by literary, moral and religious instruc-

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"That your committee reciprocate the sentiments contained in his Excellency's speech, and in the said memorial, relative to the adoption of means for the gradual and ultimate extermination of every vestige of slavery from amongst us. A just and liberal policy requires that the offspring of those persons who are held in bondage should be placed, as far as practicable, on an equal footing with other children. But your committee are not of the opinion, that either the peace of society, or the happiness of the slaves themselves, would be promoted by the enacting a law for their entire emancipation.

The committee, in common with the memorialists, regret 'that this state, preeminently distinguished in the scale of national importance and dignity, should, nevertheless, rank among that number whose borders are stained and contaminated with slavery.' But such regret should not induce the adoption of measures calculated to violate private rights or disturb the quiet of the community.

The Legislature have at divers times borne honorable testimony against slavery, by passing laws for the amelioration of the condition of the African race; and although your committee deem it inconsistent with the rights of individuals to emancipate those who now are held in bondage, and a right to whose service is recognized as property by the laws of this state, yet we are of opinion that their condition, and especially the condition of their children, ought to be further ameliorated. Your committee have therefore prepared a bill on that subject, and have directed their chairman to ask for leave to present the same."

tion and example, than to the passions and frailties of the poor, untutored, unrefined and unfortunate victims of slavery, is a palpable inversion of a precept of our benevolent redeemer. The servant "that knew not, and did commit things worthy of stripes, shall be beaten with few stripes; for unto whomsoever much is given, of him shall be much required."

It would be an employment equally grateful and honorable to endeavor to ameliorate the condition and cultivate the affections of the natives who dwell within our territory. These have generally demeaned themselves in a friendly and inoffensive manner. Although they are amenable to our laws they are yet disqualified from pursuing the ordinary means of redress for injuries committed upon their persons or their property. It is not to be disguised that worthless and unprincipled white persons, availing themselves of the ignorance of the Indians, and of their horror at becoming the objects of punishment by laws which they cannot interpret or comprehend, wantonly and boldly violate their individual possessions and national domain. Such persons are generally of transitory residence, and are amongst the most depraved members of community, who, besides the violation of the individual and national rights of the Indians, corrupt and debase their propensities and habits. These intruders bid defiance to the ordinary remedy by ejectment, the issue of which they can protract for two or three years, and if they cannot, in the meantime, avail themselves of the contingency of the purchase by the state, or of special legislative interposition in their behalf, they escape before final process overtakes them, and leave the estate to the Indians encumbered with the expense of the proceedings. Of repeated and earnest appeals for the redress of these grievances, a wise and prudent legislature cannot be regardless. As no right to the possession or title of Indian lands can be

acquired from them by an individual,[2] and as, therefore, no legal or valid defence can possibly be made in a suit at law, it is submitted whether a power to expel, in a summary way, intruders upon Indian territory, or upon public lands, where no pre-emptive right is reserved, ought not to be vested somewhere, to be exercised under suitable restrictions, and whether such intruders ought not to be deemed public offenders, and be dealt with accordingly.[3]

You will, in a few days, receive the report of the commissioners, who were appointed to investigate the titles of the Onondaga salt lots. Its importance will doubtless direct your serious attention to the general regulation and permanent usefulness of that invaluable establishment. Every discernable avenue ought to be closed, by which associations or individuals may monopolize the lots, or the salt manufactured at the public springs. If that be permitted, the object contemplated by the government may be defeated, and the industrious and enterprising citizens of that flourishing portion of the state be essentially and permanently injured.[4]

Our treasury, for upwards of twenty years, has been constantly drained by the discharge of pretended or real demands against confiscated lands. The best means of resisting or limiting those demands, has frequently engrossed the earnest attention of the legislature. The systems which it has heretofore devised, however, have been more or less parried by speculative management or legal ingenuity. Possessions of nearly twenty years, warranted and confirmed by public authority are constantly dis-

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[2] Const. 1777, § 37.

[3] Chap. 239, passed June 19, made trespass on Indian lands a misdemeanor, and provided for its punishment. An act passed in 1821, chap. 204, provided for the summary removal of trespassers from Indian lands. This act was sustained in New York ex rel. Cutler v. Dibble, 21 How. 336, affirming 16 N. Y. 203.

[4] Chap. 164, passed June 15, contained detailed regulations concerning the administration of salt lands and springs.

turbed, and our treasury still feels the pressure of demands, which the purchasers of those claims are constantly heaping upon it. It is essential to our financial resources, that effectual barriers be interposed against those claims. It would, perhaps, contribute materially to lessen their amount in future, were you to make void, and punish as fraudulent and criminal speculators upon the state, all direct or indirect purchasers of them.

Much of the time of the legislature has heretofore been engrossed with the concerns of incorporated institutions. It is a question worthy of our serious meditation, whether corporations, other than those of a literary, charitable or religious kind, have not already been multiplied to a dangerous and alarming extent, particularly those of them which are endowed with the power of conducting monied operations.

It has already been announced, that petitions for new banks, to the amount of eighteen and a half millions of capital, will be presented during the present session. It will appear, by a report on your files of February last, and by an inspection of the laws passed since that, that our existing bank capital, including the stock to be subscribed by the state, amounts to nearly thirteen millions of dollars. The debts which may now be legally contracted upon that capital, are thirty-nine millions; and if eighteen millions and a half of additional capital should be granted, the banks of this state alone, will then be enabled to contract debts, or in other words to issue their paper to the enormous sum of ninety-four millions of dollars, a sum at least sixteen times greater than the whole specie capital of the state. A failure to discharge such a debt will produce universal bankruptcy and ruin.

The fearful prospect presented to my imagination by the preceding facts, and by the infatuation which has hitherto occasionally prevailed, with respect to banks, demand of

me, as a sacred, official duty, to submit to your consideration a few remarks upon that subject.[5]

The intrigue and hollow pretences which are frequently practised to draw the legislature into the views of applicants, by exciting expectations that particular local benefits will flow from the grant of the charter solicited; or that particular classes of citizens, or politicians, will be peculiarly gratified by it, ought not to impose upon us at this late day, for we know, that expectations, excited by such representations, have too often vanished in a subsequent selfish, speculating and demoralizing distribution of the stock. Neither ought we to be unmindful, that not unfrequently, the prominent men who seek the incorporation of new banks, are the very same who have deeply participated in the original stock of most of the previously established banks. Having disposed of that stock at a lucrative advance, and their avidity being sharpened by repeated gratification, they become more importunate and vehement in every fresh attempt to obtain an opportunity of renewing their speculations. It is also worthy of preliminary notice that the apparent unanimity in favor of a measure which often surrounds the capital when the legislature are beset with bank applications, is no real indication of the sentiments of the community at large.

One prominent objection which meets us at the threshold of an examination of this subject is, that the vaults of banks are the reservoirs into which the specie is collected, and where larger quantities of it are at all times accessible by those who may wish to send it out of the country, than would be the case were the specie left diffused instead of the paper.

Bank stock is generally owned by the speculating, the wealthy, and the aspiring part of society. An amount of their personal property equal to that vested in stock, is

[5] Several banks were incorporated at this session.

withdrawn from other applications and appropriations of it, which would probably be more beneficial to the agricultural, manufacturing and laboring interests. Hence arises the difficulty experienced by enterprising farmers, manufacturers and mechanics to raise money at lawful interest upon the best security; and hence it follows, that the necessity of temporary pecuniary relief, frequently drives them into the embraces of unprincipled, avaricious usurers, who fertilize upon the wants and distresses of the needy and unfortunate.

The influence of the wealth amassed and concentrated in bank stock, wielded under the direction of a few persons not accountable or responsible to the community for their conduct, nor restrained by any official oath, may be devoted to a sway over individual passions, sentiments and exertions, alarming in a representative government. A diligent observer will have already perceived one palpable operation of this influence on public sentiment, in the fashionable, erroneous opinion which prevails, that there is greater sanctity in corporate, than in individual property and rights, and that the one is less amenable than the other to governmental control, and less subservient to any paramount public good.

The multiplication of banks increases the facility of counterfeiters to make depredations on society, and their operations are almost exclusively prejudicial to the less wealthy part of the community, whose business does not familiarize them with the great variety of paper money which is put afloat. The last mentioned part of society are generally the most moral, upright and useful members thereof, and are the main dependence of government in times of danger and of war. Of them, therefore, the legislature ought to be the peculiar guardians. A recent detection of immense quantities of false bills creates serious apprehension that the amount of forged paper already emitted, bears a great proportion to the quantity of gen-

uine paper in circulation; and if so, how will the country be deluged with the former, if the facilities for putting it off be multiplied?

One of the baleful consequences of banks, is the facility with which credit may be obtained by certain descriptions of persons in and near cities and villages through the medium of a responsible endorser. The fictitious capital thus acquired by a man, inspires confidence in all descriptions of dealers and mechanics, who consequently trust him. Whenever adversity overtakes him, the property on hand is immediately transferred to the endorser to secure the bank demand. This course is dictated by a sense of gratitude to the endorser, and by a desire to propitiate the good will and future patronage of the bank; and it thus happens that whilst the bank obtains full payment, more humble creditors who have trusted the insolvent in consequence of the imposing appearances, with which that very bank invested him, lose the utmost farthing of their dues. Hence, and not from the defect of the insolvent law, as is generally imagined, proceeds the universal complaint that the estates of insolvents yield no dividends to ordinary creditors.

The wound which the morals and reputation of neighboring states have experienced from a too great indulgence of the bank mania, and the present depreciated credit of bank currency, there and in England, furnishes a lesson of vast importance to patriotic and upright statesmen. The paper of the late bank of the United States had an unbounded credit and circulation. At its first creation, there were few rival institutions in the great mercantile cities, where its branches were established, and it therefore enjoyed the deposits and business of the first houses and characters in the union. It was also patronized by the exclusive deposits of the general government, to the amount of near twenty millions annually, which added greatly to its ability for accommodation; and if that bank

with such unprecedented advantages, can neither make a dividend for the present year, nor redeem the original stock at par after payment of its debts, which is evident from the price of its stock, what would be the fate of many of our present banks were their affairs brought to a close? And they will assuredly be brought to a close whenever a material shock shall be given to the credit and circulation of their paper. The then disastrous consequences are incalculable, consequences which will not be confined to cities and villages, but will pervade in a more eminent degree, the agricultural parts of the state.

To facilitate commercial operations, is the ostensible pretext for soliciting bank charters, and is the only justification for granting them. But at this moment, commerce is almost annihilated, and therefore there exists now no necessity ostensible or real for the multiplication of banks.

There is one other consideration of emphatical influence at the present period. It is well known that stock is generally considered an unfit subject of taxation, and in fact is not included in the taxable fund, nor does it contribute to discharge the public burdens, nor is it liable to distress, or to seizure or sale upon execution. To increase, therefore, the amount of that untangible kind of property at this moment of apprehended war, would be justly considered a partial exemption from contribution towards the public burdens of so many millions of the personal property of the rich. With what indignation would the yeomanry, the great body of our constituents, receive the intelligence of measures directly calculated to increase their burdens by a partial indulgence of the property of the rich?

Finally, we must be feelingly alive to everything which has a tendency to impair confidence in the public functionaries. If the interests and the sentiments of the great mass of our constituents are opposed to the further incorporation of banking associations; if their institution

will greatly facilitate forgers in passing false bills; if the suspension of commerce takes away the only plausible and rational pretext for countenancing them; if the wisdom taught us by the experience of neighboring states, of foreign countries, and by the supposed situation of the late United States bank, confirm and proclaim the danger to be anticipated from assenting to the increase of the number and capital of banks; if they contribute to drain the country of specie and discourage agriculture and manufactures, by withdrawing from other uses and appropriations more beneficial to them, the money of the affluent; if they have an influence which enables them to obtain the whole property of insolvent debtors, to the injury of other creditors; if their tendency be to the subversion of our government, by vesting in the hands of the wealthy and aristocratic class, powerful engines to corrupt and subdue republican notions; if the augmentation of bank capital causes an equivalent curtailment of the taxable fund, and will thereby relieve the wealthy stockholders from their equal share of contribution to the public service, and proportionably enhance the tax on the hard earnings of the farmer, manufacturer, mechanic and laborer; if the wisdom and example of the national government be worthy of respect or imitation; and if we still persevere in multiplying banks, will there not be danger of infusing into the public mind a suspicion, either that we yield too pliantly to the management and pressure of external combinations, or that the unhallowed shrine of cupidity has its adorers within the very sanctuary of legislation? Such a suspicion will be the prelude to the downfall of republican government, for it is erected and supported upon the affections of the people at large, and upon their faith in the inviolable firmness and probity of their public agents, and when once the foundation is removed the superstructure must fall of course. Let us, therefore, conscientiously endeavor so to dispose of the various bank applications

with which we are to be assailed, as to promote the general welfare, and at the same time, to retain and confirm public confidence, not only in the wisdom, but also in the unbending independence and unsullied integrity of the legislature.

A communication from the Chancellor of this state relative to certain existing evils in the administration of justice, in the high and important tribunal over which he presides, is now presented. Your discernment and watchful care over the rights of your constituents, and the dignified and respectable source from whence the representation of the existence of those evils is derived, will doubtless engage your best efforts to devise and apply the appropriate remedy.[6]

The report of the commissioners of the school fund, shortly to be laid before you, will attract your attention to the diffusion of useful knowledge, and the consequent promotion of virtue and happiness.[7]

The flourishing state of domestic manufactures, and the share which the encouragement and bounty of the legislature has had in contributing to their activity and success, and the consequent independence of the country, prompt to a continuance of every countenance and support compatible with our resources.[8]

On a former occasion, I had the honor of communicating to the legislature my ideas of corporeal and capital punishments. I shall not therefore dwell upon that theme now, longer than to repeat that I have always entertained seri-

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[6] The communication was from Chancellor John Lansing, Jr., and related to excessive fees charged by masters in chancery, against which there seemed to be no legal protection. The Legislature sought to remedy the evil by enacting chap. 185, on the 18th of June regulating the power of taxation of costs in the Court of Chancery.

[7] See *post*, p. 717, for report of the commission on common schools appointed in 1811.

[8] The Legislature sought to encourage the manufacture of woolen cloth by chap. 230, passed June 19, 1812. Premiums were to be awarded for the best quality of cloth manufactured in the State from wool produced in the State.

ous doubts of the right of society to take away life in any case, that such extreme and vindictive punishment is by no means indispensable for the preservation of the social compact or for the peace and security of society; and that it is offensive and repugnant to those sympathetic emotions, those beneficent virtues, and that refinement of policy and of reason which adorn civilized and free communities. If by inviting your reflections once more to this interesting topic, I shall be so fortunate as to subserve the cause of humanity, by effacing from our revised code that vestige of barbarism it will be to me a source of high and durable satisfaction.[9]

GENTLEMEN.— For the unusual length of this address, my only apology is to be found in the great variety and importance of the matters which will necessarily engross your attention.

With an acknowledgment of my high sense of your patient indulgence, I offer a fervent prayer to Him who directs the passions and talents of man, and controls the destinies of nations, to inspire us with unanimity, patriotism, and wisdom, in the performance of the high and responsible duties of our respective stations, and to grant that our services may redound to the lasting happiness and welfare of the state.

DANIEL D. TOMPKINS.

Albany, January 28, 1812.

SPECIAL MESSAGES.

January 28. To the Senate:

Objections by the Council of Revision to a bill, passed at the last session, "for the security of the estates of femes covert in certain cases."

"Because the bill, in the cases therein mentioned, exempts the estate of a *feme covert* from liability of satisfac-

[9] See *post*, p. 729, for the report of an Assembly committee on capital punishment.

tion of her husband's debts, contracted during her coverture — thus impairing the obligation of contracts,[b] and depriving the creditors of the husband of a right which, in many instances, may have been the sole inducement to giving him credit.

Because the provisions in the bill may facilitate collusions and frauds, the more difficult of detection from the legal unity of persons and interests of husband and wife, and their incompetency of testifying against each other.

Because, by the provisions of the bill, the husband is divested of many of his most important rights, in consequence of his mere refusal to cohabit with his wife, notwithstanding her conduct may have been so scandalously flagitious, corrupt or improper, as to render such refusal perfectly justifiable.

Because the provisions of the said bill are, in the opinion of the Council, dangerous and impolitic; having a tendency to prevent a reconciliation between the husband and wife, when differences, arising in many instances from the most trivial causes, may have produced a separation between them.

Because the provisions in the bill are not reciprocal, and on that account, in this case, unjust; for if it be necessary and proper, when the husband shall refuse to cohabit with his wife, to subject him to the burthens and disabilities contained in the bill, it is equally necessary and proper, in case the wife unjustifiably refuses to cohabit with her husband, that she should forfeit all right to dower of his estate, after his decease."

The bill was not passed over the veto.

January 31. To the Senate: Transmitting the statement of the population of New York as shown by the Federal census of 1810.

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[b] U. S. Const. art. 1, § 10, clause 1.

February 4 and 7. Thanking the Senate and Assembly respectively for their addresses.

February 11. To the Senate:

"GENTLEMEN.—By the 10th section of the act for incorporating the Union Bank, passed at the last session of the legislature, it was declared, that unless the president and directors of the Jersey Bank should within three months thereafter surrender and dissolve the charter they held under a law of the legislature of New Jersey, or unless the same should be otherwise dissolved, the said act, and the provisions thereof, should be null and void. I have now the honor to lay before you the documents in the envelope (A) which have been communicated to me, as the evidence of a compliance with the before mentioned condition.

The paper marked (B) herewith communicated, contains an official copy of the recent law of the United States, 'for the apportionment of representatives among the several states, according to the third enumeration.'[10]

The papers marked (C) contain resolutions and laws of other states, relative to proposed amendments of the constitution of the United States. It is perhaps proper for me to add, that the proposed amendments have been before the legislature of this State for several years, without being disposed of, or acted upon.

DANIEL D. TOMPKINS."

February 10, 1812.

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[10] Chap. 120, passed June 10, divided the State into 21 congressional districts; six districts were to elect two representatives each, making 27 in all, as provided by an act of Congress. By chap. 169, passed June 16, the first election of representatives under this apportionment was to be held on the third Tuesday of December, and the two succeeding days (15th, 16th, and 17th), 1812, and subsequent elections were to be held on the last Tuesday of April and the two next succeeding days in each alternate year.

February 11. To the Senate:

"GENTLEMEN.—Believing that it will be satisfactory and useful to you to be informed of the proceedings of our sister states, in relation to the great national concern of a canal between the western lakes and the river Hudson, I do myself the honor of communicating to you the resolution of the legislature of the state of Ohio upon that subject.[11]

DANIEL D. TOMPKINS."

February 11th, 1812.

The Ohio resolutions were as follows:

"*Resolved*, by the senate and house of representatives of the state of Ohio. That they consider the communication by means of a canal navigation, between the great lakes and Hudson's river, as a project of national concern; that the accomplishment of such a project, free from a transit duty, would have the most extensive and beneficial effects, by facilitating the intercourse between remote parts of the United States; diminishing the expense of transportation, thereby rendering the produce of our country more valuable, the price of foreign commodities cheaper, and that its tendency would be to encourage

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11 Commissioners appointed by the act of 1811 "to provide for the improvement of the internal navigation of the State," submitted a report to the Senate on the 14th of March, 1812, reciting the applications to the President and Congress for national aid and that Congress had declined to engage in the enterprise. The commissioners recommended that the State proceed to build the canal on its own account, and presented reasons for believing that the project would be beneficial and profitable. The result of an application to the States was also given. DeWitt Clinton and Gouverneur Morris were deputed to visit Washington, and present the matter to Congress.

The Senate journal gives their report, and also the applications made to Congress, to the President, and to the States.

This report was followed by an act, chap. 231, passed June 19, further to provide for the improvement of the internal navigation of this State. It continued in office the commissioners appointed under the act of 1811, authorized them to purchase the interests of the Western Lock Navigation Company, procure voluntary cessions of land for canal purposes, and borrow not exceeding $5,000,000 to be used in carrying forward the canal enterprise.

agriculture, manufactures, internal commerce, and to strengthen the bond of union between the states.

Resolved, as the sense of this General Assembly, that it would be expedient for the expense of said canal to be provided for by the United States, in such manner as they shall think proper, and that the same be free from toll or transit duty, for the transportation of produce, manufactures, or merchandise thereon."

February 11. To the Assembly: Recommending that regents be elected in the place of Dr. John Rodgers and Mr. Ezra L'Hommedieu, deceased.[12]

February 11. To the Assembly: Transmitting a communication from the Adjutant General with an accompanying return of the militia for 1811.

February 17. To the Assembly:

"GENTLEMEN.—Pursuant to the power vested in me, by the act passed April 9, 1811, Jedediah Peck, John Murray, junior, Samuel Russel, Roger Skinner, and Robert Macomb, were appointed commissioners, to report a system for the organization and establishment of Common Schools. The system they have devised, is now submitted to the consideration of the Legislature. [See note 7.]

DANIEL D. TOMPKINS."

Albany, Feb. 17, 1812.

February 18. To the Assembly: Transmitting the annual report of the Inspector General of Staves and Heading.

February 29. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

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[12] Joseph C. Yates and Solomon Southwick were appointed Regents in place of John Rodgers and Ezra L'Hommedieu, deceased.

March 16. To the Assembly:

Objections by the Council of Revision to a bill "relative to the real estate of George Teeple, deceased."

"Because the bill is totally useless, an adequate remedy being provided by the seventh section of the act, entitled 'an act concerning idiots, lunatics and infant trustees,' which authorized infant trustees to convey trust estates, under the discretion of the court of chancery, the vendor's heirs being, by operation of law, trustees for the vendees."

The bill was not passed over the veto.

March 27. To the Legislature:

"GENTLEMEN.—The constitution of this state has vested in the Governor thereof a discretion to prorogue the Assembly and Senate, from time to time, provided such prorogations shall not exceed sixty days in the space of any one year.[c] It was doubtless intended by the wise and patriotic framers of that sacred instrument, that this power should be exercised on all occasions when, in the opinion of the executive, the public good would be promoted by it.

I entertain a perfect conviction that the exercise of the above mentioned prerogative, at the present time, is not only a sacred and indispensable duty which I owe to the community, but that it will have a tendency to awaken inquiry, and to produce a degree of information which under existing circumstances, cannot fail to be useful and important in deciding, ultimately, upon some of the most important measures now pending before the legislature.

I am not unmindful of the magnitude and responsibility of the duty discharged by this message; and therefore beg

[c] Const. 1777, § 18.

leave to assign some of the prominent reasons which have impelled me to its performance.

You are apprised, gentlemen, that some years since it was ascertained, beyond any reasonable doubt, that corrupt inducements were held out to members of the Legislature in order to obtain their votes in favor of an incorporation of a banking institution in the city of New York; and the very strong and general suspicion, that the emoluments tendered were, in certain instances, accepted, inflicted a deep wound upon the honor of the state and upon the purity and independence of legislation.

At the last session of the Legislature, an act was passed incorporating the late Jersey bank; and although there has been as yet no judicial investigation as to the alleged improper means made use of to obtain that act, there is a very general public opinion, that unwarrantable attempts were resorted to on that occasion to influence, unduly, the then members of the Legislature.

With respect to the bill for the incorporation of another bank in the city of New York, by the name of the bank of America, now before the Senate, many, and forcible objections, exist against it; and I cherished the hope that the considerations which I had the honor to suggest to the Legislature at the commencement of the present session, would have had their due influence. In corroboration of those considerations, I avail myself of this occasion to remark, that the bill now before the Senate, establishes in the city of New York, a bank with a capital of six millions of dollars; that five millions thereof may be subscribed by the stockholders of the late bank of the United States, without any provision which gives a preference to the citizens of the United States; and thus foreign stockholders may be admitted, in the discretion of the directors, to monopolize the stock, and consequent control, of the in-

tended bank, and thereby acquire a dangerous influence in the monied operations and other important concerns of the State.

The Banking capital in the city of New York now exceeds nine millions of dollars. This capital, in the most flourishing state of our commerce, has been found adequate to commercial purposes. The United States, we have much reason to apprehend, are on the verge of a war with Great Britain, in defence of our rights, our national honor, and our independence; and commerce is consequently nearly suspended. Can it be wise, then, to increase our banking capital in an unprecedented manner, at a time when we have only a very limited and restricted commerce left? Can it be prudent or safe, at such a time, to employ British capital, and subject ourselves to its deleterious influence in thwarting the operations of our own government, in a just and necessary war with Great Britain? It appears to me that it would be unwise and impolitic.

When I contemplate the erection of a new bank in the city of New York with so enormous and unusual a capital; when I perceive the resuscitation within this state of half the whole capital of the late United States bank; and when I view the power which that bank is to concentrate in the hands of a few individuals, I cannot but feel the most lively apprehensions for the safety of all other banking institutions, and of our most inestimable political institutions.

But these considerations become less important when compared with others, to which it is my painful duty here to advert.

It appears, by the journals of the Assembly, that attempts have been made to corrupt, by bribes, four members of that body, to vote for the passage of the bill, to incorporate the aforesaid bank; and it also appears by the journals of the Senate, that an improper attempt has been

made to influence one of the Senators to vote for the said bill. Far be it from me to insinuate that improper considerations have induced any member of the Legislature to vote for the said bill; yet, should its final passage now take place, before the persons implicated in holding out the before mentioned inducements shall have been judically tried, and without consulting the feelings and opinion of the community at large upon the subject, public sentiment will, I fear, however unjustly, attribute its passage, in some degree, to the influence of such inducements.

Under such persuasion, I entertain the most fearful apprehensions that the confidence of the people in the purity and independence of legislation will be fatally impaired; our representative system, which has been devised for us by our sages and wisest jurists as a safeguard for our security, our property, and our liberty ultimately destroyed; and this great and populous state lose her just importance and influence in the destinies of the United States.

It gives me sincere anxiety and pain to reflect that many individual inconveniences will result from a prorogation of the legislature at this time, yet these inconveniences do not compare with the public considerations which induce this measure.

Solemnly impressed with the importance of the preceding considerations, and feeling that the morals, the honor and the dignity of the state require it — and in order that time may be afforded for reflection, and for the complete ascertainment of public sentiment upon a measure fraught with such important consequences, I have deemed it proper to prorogue, and I do hereby prorogue the Assembly and Senate until the twenty-first day

of May next, then to meet in the Capitol in the city of Albany.[13]

Given under my hand and the privy seal of the state of New York, at the city of Albany, this [L. S.] twenty-seventh day of March, in the year of our Lord, one thousand eight hundred and twelve.

DANIEL D. TOMPKINS."

May 21. The Legislature met pursuant to the Governor's prorogation.

May 25. To the Assembly:

"GENTLEMEN.—I have the honor herewith to communicate the annual report of the commissioners of fortifications. Since the date of their report the commissioners have proceeded in the expenditure of the balance mentioned therein. The importance of the object which dictated the original appropriation induces me to hope that the Legislature will readily grant the additional sum required to finish the work for protecting the magazine and batteries already completed.

The Colonel of engineers is authorized to erect an additional battery on the North River, in New York, to prevent an enemy from anchoring above and under cover of the State Prison, and annoying the north part of the city with shells; and on account of the prominent position of the public wharf at the prison, and the turn in the shore of the river a small distance above, that wharf has been selected as the most eligible site for the proposed battery.

[13] In both houses resolutions were offered vigorously protesting against the prorogation, and denying the Governor's power thus to interfere with the Legislature in the exercise of its prerogative as the law-making branch of the government, but the resolutions apparently received no consideration.

Legislative provision will however be requisite to authorize the occupation by the United States of a part of the State Prison wharf for the above purpose. As the work is intended to be completed immediately, the early attention of the Legislature to this subject is respectfully requested.

Representations have been made to me from the counties of Niagara, Franklin and Steuben, of the great anxiety which prevails there about the means of defence; and earnest application has been made to have arsenals erected, and arms, ammunition and military stores for defence, upon a sudden invasion or other emergency, deposited therein. The position of those counties will expose the inhabitants to great danger from Indians, in the events of invasion or hostilities between the United States and Great Britain, or between the United States and any nation of the northern Indians. I therefore concur in the reasonableness and justice of the application from the counties above mentioned; but as previous legislative authority is indispensable to a compliance with their request, I beg leave to recommend the subject to the consideration of the Legislature. [See note 1.]

DANIEL D. TOMPKINS."

Albany, May 23d, 1812.

May 26. To the Assembly:

Objections by the Council of Revision to a bill "to authorize the guardians of Phebe B. Hart, Sally Ann Bloom, Eliza Bloom, and Jane Bloom, to execute a deed to James Gazley."

The reasons assigned were the same as in the veto of the Teeple bill. Special message, March 16. The bill was not passed over the veto.

June 1. To the Senate:

"GENTLEMEN.—I have the honor to lay before you a communication from Col. Lamb, deputy quarter master in

the service of the United States. I presume there will be no objection on the part of the legislature to assent to the purchase of the premises mentioned in the said communication, and to prescribe the nature and extent of the jurisdiction which shall thereupon vest in the United States.[14]

DANIEL D. TOMPKINS."

Albany, June 1, 1812.

Col. Lamb's communication informed the Governor that the United States desired the cession of a piece of land in Greenbush, Rensselaer County, which had been selected as a site for the erection of magazines, arsenals and barracks.

June 10. To the Assembly:

Objections by the Council of Revision to a bill "for the relief of the heirs of John Schultz, deceased."[15]

"Because no reason appears in the bill, why trustees are required to be appointed to sell the real estate whereof John Schultz died seized, more than in any other case of infant heirs; and as the general law of the land vests the real estate of an ancestor in his heirs, it ought not to be divested without their consent, unless clearly for their benefit, under peculiar circumstances, duly suggested and assumed as the ground of legislative interposition."

June 13. To the Assembly:

"GENTLEMEN.—I have the honor to lay before you, a communication from the General Synod of the Reformed

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14 The fortifications act, chap. 139, passed June 12, contained a provision by which a tract of land in Greenbush, Rensselaer county, was ceded to the United States, for the erection of magazines, arsenals, barracks, and other needful buildings.

15 This bill, for the relief of the heirs of John Schultz, deceased, was not passed over the veto, but another bill on the same subject was passed, and became a law, chap. 197, on the 19th of June.

Dutch Church in the United States. I beg leave at the same time to assure the legislature of my conviction of the propriety of a compliance, on the part of the constituted authorities of this state, with the pious request contained in the said communication; and to tender a zealous co-operation in any measures which they may adopt recommendatory of the observance, by the citizens of this state, of the last Thursday of July next as a day of humiliation, fasting and prayer.[16]

DANIEL D. TOMPKINS."

Albany, June 13, 1812.

The following is the communication referred to in this message:

"*To His Excellency,* DANIEL D. TOMPKINS, *Governor, and the Honorable* THE LEGISLATURE OF THE STATE OF NEW YORK.

The General Synod of the Reformed Dutch Church in the United States, now in session in this city, taking into serious consideration the alarming state of our country at the present time, have set apart the last Thursday of July next, as a day of humiliation, fasting and prayer, to be observed by all the churches under their care. They respectfully represent to your Excellency and honorable body, that in this pious measure they unite with the general assembly of the Presbyterian, and the Synod of the Associate Reformed churches in America. Whilst it would ill become us to be insensible of the many distinguishing mercies enjoyed by us, and denied by an overruling Providence to every other nation on earth; yet such are the boding and gloomy signs of the times; such is the prevalence of iniquity; the languishing state of vital religion, and the abuse

[16] A concurrent resolution was adopted, requesting the Governor to issue a proclamation, recommending that the last Thursday of July be observed as a day of humiliation, fasting, and prayer.

of signal blessings; such are the numerous and variegated instances of divine judgments, and the portentous indications of increasing calamities, as loudly to call on a Christian people to humble themselves under the mighty hand of God.

The Synod have deemed it not only proper, but a duty, to address, on this important subject, the Chief Magistrate and Legislature of a state containing by far the greatest number of our societies; a state the most prominent in the Union, and which, should threatening evils be realized, will probably experience a full share of unavoidable sufferings.

They make this communication, and submit these observations, with due deference and respect; suggesting their wish that your excellency and honorable body will be pleased to recommend the above day to be observed as such, by all the citizens of this state.

By order of the Synod.

JACOB SICKLES, *President.*
ISAAC L. KIP, *Clerk.*"

Albany, June 12th, 1812.

June 15. To the Assembly:

Objections by the Council of Revision to a bill "relative to certain real estate of Anthony Marvin, deceased."

The bill was vetoed on the same grounds as the Teeple bill. See Special Message, March 16. The bill was not passed over the veto.

June 16. To the Assembly:

Objections by the Council of Revision to a bill "for the relief of Nancy Fairchild and her infant son."

The reasons assigned were the same as in the veto of the Schultz bill. See Special Message of June 10.[17]

[17] The Fairchild bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chap. 229, on the 19th of June.

June 19. To the Senate:

Objections by the Council of Revision to a bill "incorporating trustees to manage such funds as Alexander Proudfit may dispose of for pious and charitable gospel purposes."

"Because the bill is against the existing general restraint imposed by the wisdom of the legislature on the devise of land to be held in mortmain, in a case undistinguished from others of the same class.

Because, the bill contains no limit as to amount, except the value of the estate of Alexander Proudfit, which may be increased to a dangerous excess, by the benefactions of others, and applied to promote objects which it has been the uniform and salutary policy of the state to confine within reasonable and prescribed bounds.

Because, the bill authorizes Alexander Proudfit, by a disposition of any part of his estate, by his will or otherwise, to trustees, to create a corporation of perpetual duration, and to prescribe the objects, terms, limitation and application of the trust fund, at his discretion, which is so wholly unprovisionary, as to leave the donor an unrestrained latitude of modification of the corporation and the direction of its funds to any object comprehended within the comprehensive terms of pious and charitable gospel purposes."

The bill was not passed over the veto.

June 19. The Legislature adjourned to meet the first Tuesday of November, 1812.

COMMON SCHOOLS.

On the 17th of February the Commission on Common Schools appointed under an act passed at the last session [*ante*, p. 702] presented the following report:

"Perhaps there never will be presented to the legislature a subject of more importance than the establishment

of common schools. Education as the means of improving the moral and intellectual faculties, is, under all circumstances, a subject of the most imposing consideration. To rescue man from that state of degradation to which he is doomed, unless redeemed by education; to unfold his physical, intellectual, and moral powers; and to fit him for those high destinies which his Creator has prepared for him, cannot fail to excite the most ardent sensibility of the philosopher and the philanthropist. A comparison of the savage that roams through the forest, with the enlightened inhabitant of a civilized country, would be a brief, but impressive representation, of the momentous importance of education.

It were an easy task for the commissioners to show that in proportion as every country has been enlightened by education, so has been its prosperity. Where the heads and the hearts of men are generally cultivated and improved, virtue and wisdom must reign, and vice and ignorance must cease to prevail. Virtue and wisdom are the parents of private and public felicity, vice and ignorance of private and public misery.

If education be the cause of the advancement of other nations, it must be apparent to the most superficial observer of our peculiar political constitutions that it is essential, not to our prosperity only, but to the very existence of our government. Whatever may be the effect of education on a despotic, or monarchical government, it is not absolutely indispensable to the existence of either. In a despotic government the people have no agency whatever, either in the formation or in the execution of the laws. They are the mere slaves of arbitrary authority, holding their lives and property at the pleasure of uncontrolled caprice. As the will of the ruler is the supreme law, fear, slavish fear, on the part of the governed, is the principle of despotism. It will be perceived readily, that ignorance on the part of the people can present no barrier to the

administration of such a government; and much less can it endanger its existence. In a monarchical government the operation of fixed laws is intended to supersede the necessity of intelligence in the people. But in a government like ours where the people is the sovereign power; where the will of the people is the law of the land, which will is openly and directly expressed; and where every act of the government, may justly be called the act of the people, it is absolutely essential that that people be enlightened. They must possess both intelligence and virtue; intelligence to perceive what is right, and virtue to do what is right. Our republic, therefore, may justly be said to be founded on the intelligence and virtue of the people. For this reason it is with much propriety, that the enlightened Montesquieu has said, 'in a republic the whole force of education is required.'

The commissioners think it unnecessary to represent in a stronger point of view, the importance, and absolute necessity of education, as connected either with the cause of religion and morality, or with the prosperity and existence of our political institutions. As the people must receive the advantages of education the inquiry naturally arises, how this end is to be attained. The expedient devised by the Legislature, is the establishment of common schools which being spread throughout the state, and aided by its bounty, will bring improvement within the reach and power of the humblest citizen. This appears to be the best plan that can be devised, to disseminate religion, morality and learning throughout a whole country. All other methods, heretofore adopted, are partial in their operation and circumscribed in their effects. Acadamies and universities, understood in contradistinction to common schools, cannot be considered as operating impartially and indiscriminately, as regards the country at large. The advantages of the first are confined to the particular districts in which they are established; and the second, from causes

apparent to every one, are devoted almost exclusively to the rich. In a free government, where political equality is established, and where the road to preferment is open to all, there is a natural stimulus to education; and accordingly we find it generally resorted to, unless some great local impediments interfere. In populous cities, and the parts of the country thickly settled, schools are generally established by individual exertion. In these cases, the means of education are facilitated, as the expenses of schools are divided among a great many. It is in the remote and thinly populated parts of the state, where the inhabitants are scattered over a large extent, that education stands greatly in need of encouragement. The people here living far from each other, make it difficult so to establish schools, as to render them convenient or accessible to all. Every family, therefore, must either educate its own children, or the children must forego the advantages of education.

These inconveniences can be remedied best by the establishment of common schools, under the direction and patronage of the State. In these schools should be taught, at least, those branches of education which are indispensably necessary to every person in his intercourse with the world, and to the performance of his duty as a useful citizen. Reading, writing, arithmetic, and the principles of morality, are essential to every person, however humble his situation in life. Without the first, it is impossible to receive those lessons of morality, which are inculcated in the writings of the learned and pious; nor is it possible to become acquainted with our political constitutions and laws; nor to decide those great political questions, which ultimately are referred to the intelligence of the people. Writing and arithmetic are indispensable in the management of one's private affairs, and to facilitate one's commerce with the world. Morality and religion are the foundation of all that is truly great and good, and are consequently of primary

importance. A person provided with these acquisitions, is enabled to pass through the world respectably and successfully. If, however, it be his intention to become acquainted with the higher branches of science, the academies and universities established in different parts of the state, are open to him. In this manner, education in all its stages, is offered to the citizens generally.

In devising a plan for the organization and establishment of common schools, the commissioners have proceeded with great care and deliberation. To frame a system which must directly affect every citizen in the state, and so to regulate it, as that it shall obviate individual and local discontent, and yet be generally beneficial, is a task, at once, perplexing and arduous. To avoid the imputation of local partiality, and to devise a plan, operating with equal mildness and advantage, has been the object of the commissioners. To effect this end they have consulted the experience of others, and resorted to every probable source of intelligence. From neighboring states, where common school systems are established by law, they have derived much important information. This information is doubly valuable, as it is the result of long and actual experience. The commissioners by closely examining the rise and progress of those systems, have been able to obviate many imperfections, otherwise inseparable from the novelty of the establishment, and to discover the means by which they have gradually risen to their present condition.

The outlines of the plan, suggested by the commissioners, are briefly these. That the several towns in the State, be divided into school districts, by three commissioners, elected by the citizens qualified to vote for town officers; that trustees be elected in each district, to whom shall be confided the care and superintendence of the school to be established therein; that the interest of the school fund be divided among the different counties and towns, according

to their respective population, as ascertained by the successive census of the United States; that the proportion received by the respective towns, be subdivided among the districts, into which such towns shall be divided, according to the number of children in each, between the ages of five and fifteen years inclusive; that each town raise, by tax, annually as much money as it shall have received from the school fund; that the gross amount of monies received from the state and raised by the towns, be appropriated, exclusively, to the payment of the wages of the teachers; that the whole system be placed under the superintendence of an officer, appointed by the Council of Appointment. These are the great outlines of the plan; the details will appear more fully by the annexed sketch of a law, submitted to the consideration of the legislature.

This being the plan devised by the commissioners, let us next inquire what means the legislature have assigned to carry it into effect. This will be explained by a reference to the report of the comptroller of the state, made to the legislature, the 11th of February instant. By this it appears that the School Fund is composed of the following items:

Bonds and mortgages for part of the consideration money of lands sold by the Surveyor General	$240,370.67
3000 shares of the capital stock of the Merchants' Bank	150,000.00
300 shares of the capital stock of the Hudson Bank	15,000.00
Mortgages for loans	101,924.52
Bond for Horatio G. Spafford and sureties for a loan	3,000.00
Bond of the Mechanics' Bank in the city of New York	10,000.00

Arrears of interest due on the bonds and mortgages of the fund	$35,831.13
Balance in the Treasury on the 31st December, 1811, belonging to this fund	2,338.37
	Dolls. 558,464.69

REVENUE.

The revenue of the School Fund for this year is estimated at $45,216.95 dollars arising from the following sources:

Annual interest on bonds and mortgages	$21,766.95
Dividends on bank stock	14,850.00
Probable collections from persons refusing to do military duty	1,600.00
Proceeds of the Clerk's Office of the Supreme Court	7,000.00
	$45,216.95

It further appears, by the same report, that of the 500,000 acres of land which are directed, by law, to be sold for the benefit of the school fund, the Surveyor General has already sold 198,507 $\frac{656}{1000}$ acres, leaving 301,492 $\frac{344}{1000}$ acres yet to be appropriated to that purpose. As soon as this fund shall have produced a revenue of $50,000, that revenue by the act of April 2d, 1805, is to be divided among the different counties of the State.

It will readily be perceived by the legislature that if the common school establishment, were intended to be maintained by this fund exclusively, the fund would fall far short of being adequate to the object. A brief statement will make this fact very apparent.

Let us suppose that the school fund were arrived at that point, when by law it is to be divided. There will then be 50,000 dollars of public money to be distributed among the

schools; and as, by the contemplated plan, a sum is to be raised, annually, by tax, equal to the interest of the school fund, the gross amount of monies which the schools will receive, will be $100,000. There are in this State 45 counties, comprising, exclusively of the cities, 449 towns. It will be very evident, therefore, that the proportion of each town must necessarily be small. As, however, the school districts are authorized to raise, by tax, a sum sufficient to purchase a lot, on which the school house is to be built; to build the school house; and to keep the same in repair; and as the school monies are devoted, exclusively, to the payment of the teacher's wages, the sum, however small, which each district will be entitled to, will be, from these considerations, so much the more efficacious. It will however, be evident to the legislature, that the funds appropriated, by the state, for the support of the common school system, will, alone, be very inadequate; and the commissioners are of opinion, that the funds in any stage of it, even when the residue of the unsold lands shall be converted into money bearing an interest, never will be alone adequate to the maintenance of common schools; as the increase of the population, will probably be, in as great, if not a greater ratio, than that of the fund. But it is hardly to be imagined, the legislature intended that the state should support the whole expense of so great an establishment. The object of the legislature, as understood by the commissioners, was to rouse the public attention to the important subject of education, and by adopting a system of common schools, in the expense of which the state would largely participate, to bring instruction within the reach and means of the humblest citizen. And the commissioners have kept in view the furtherance of this object of the legislature; for by requiring each district to raise, by tax, a sum sufficient to build and repair a school house, and by alloting the school monies solely to the payment

of the teacher's wages, they have in a measure, supplied two of the most important sources of expense. Thus every inducement will be held out to the instruction of youth.

As to the particular mode of instruction best calculated to communicate to the young mind the greatest quantity of useful knowledge, in a given time, and with the least expense, the commissioners beg leave to observe, that there are a variety of new methods lately adopted, in various parts of Europe, of imparting instruction to youth, some of which methods have been partially introduced into the United States. The Lancastrian plan, as it is called, which has lately been introduced into some of the large towns of the United States, merits the serious consideration of the legislature. As an expeditious and cheap mode of instructing a large number of scholars, it stands unrivalled. And the subjoined certificates of the trustees of the New York Free School, together with those of divers tutors, carry with them the evidence of its vast utility and success. The commissioners, therefore, recommend that a number of Lancaster's books, containing an account of his mode of teaching, &c. be printed, by order of the legislature, and distributed among the several towns in this state with the annexed certificates of recommendation.

The legislature will perceive, in the system contained in the bill submitted to their consideration, that the commissioners are deeply impressed with the importance of admitting, under the contemplated plan, such teachers only, as are duly qualified. The respectability of every school must necessarily depend on the character of the master. To entitle a teacher to assume the control of a school, he should be endowed with the requisite literary qualifications not only, but with unimpeachable character. He should also be a man of patient and mild temperament. 'A preceptor,' says Rousseau, 'is invested with the rights and takes upon himself the obligations of both father and

mother.' And Quintilian tells us 'that to the requisite literary and moral endowments, he must add the benevolent disposition of a parent.'

To enable a teacher to perform the trust reposed in him, the above qualifications are indispensable. When we consider the tender age at which children are sent to school; the length of the time they pass under the direction of the teachers; when we consider that their little minds are to be diverted from their natural propensities, to the artificial acquisition of knowledge; that they are to be prepared for the reception of great moral and religious truths; to be inspired with a love of virtue and a detestation of vice; we will forcibly perceive the absolute necessity of the above qualifications in the master. As an impediment to bad men getting into the schools, as teachers, it is made the duty of the town inspectors strictly to inquire into the moral and literary qualifications of those who may be candidates for the place of teacher. And it is hoped that this precaution aided by that desire which generally prevails of employing good men only will render it unnecessary to resort to any other measure.

The commissioners at the same time that they feel impressed with the importance of employing teachers of the character described, cannot refrain from expressing their solicitude as to the introduction of proper books into the contemplated schools. This is a subject so intimately connected with a good education, that it merits the serious consideration of all who are concerned in the establishment and management of schools. Much good is to be derived from a judicious selection of books, calculated to enlighten the understanding not only, but to improve the heart. And as it is of incalculable consequence to guard the young and tender mind from receiving falacious impressions, the commissioners cannot omit mentioning this subject as a part of the weighty trust reposed in them. Connected with the introduction of suitable books, the com-

missioners take the liberty of suggesting that some observations and advice touching the reading of the Bible in the schools might be salutary. In order to render the sacred volume productive of the greatest advantage, it should be held in a very different light from that of a common school book. It should be regarded as a book intended for literary improvement not merely, but as inculcating great and indispensable moral truths also. With these impressions, the commissioners are induced to recommend the practice introduced into the New York Free School, of having select chapters read at the opening of the school in the morning and the like at the close in the afternoon. This is deemed the best mode of preserving the religious regard which is due to the sacred writings.

It will naturally occur to the legislature, as the interest of the school fund is to be divided every year among the counties and towns as soon as it shall amount to 50,000 dollars annually, that this sum must be forthcoming on a fixed day, annually, to meet the contingencies for which it is appropriated. Without a certainty in the payment of the annual appropriation, the whole system will be impeded in its operation. By a recurrence to the report of the Comptroller, it will appear that the greatest part of the revenue of the school fund arises from sources which preclude the probability of certainty in the receipt. The interest arising from monies loaned on mortgage, the net proceeds of the offices of the clerks of the supreme court, &c. cannot be counted on with any certainty as to time. This inconvenience must be, in some way, remedied. And the most advisable method that occurs to the commissioners will be, by the annual appropriation, by the state, of a sum equal to the interest of the school fund, the state having recourse to the debtors of the fund for arrears of interest for its reimbursement.

The commissioners have deemed it proper to recommend to the legislature the appointment of an officer, whose duty

it shall be to superintend, generally, the interests, and watch the operations of the common school system. They are induced to this measure by the consideration that the system is sufficiently important to justify the measure.

The commissioners cannot conclude this report without expressing, once more, their deep sense of the momentous subject committed to them. If we regard it as connected with the cause of religion and morality merely, its aspect is awfully solemn. But the other view of it, already alluded to, is sufficient to excite the keenest solicitude in the legislative body. It is a subject, let it be repeated, intimately connected with the permanent prosperity of our political institutions. The American empire is founded on the virtue and intelligence of the people. But it were irrational to conceive that any form of government can long exist without virtue in the people. Where the largest portion of a nation is vicious, the government must cease to exist, as it loses its functions. The laws cannot be executed where every man has a personal interest in screening and protecting the profligate and abandoned. When these are unrestrained by the wholesome coercion of authority, they give way to every species of excess and crime; one enormity brings on another, until the whole community becoming corrupt, bursts forth into some mighty change, or sinks at once into annihilation. 'Can it be,' said Washington, 'that providence has not connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature.'

And the commissioners cannot but hope, that that Being, who rules the universe in justice and in mercy, who rewards virtue and punishes vice, will most graciously deign to smile benignly on the humble efforts of a people in a cause purely his own; and that he will manifest his pleasure in the lasting prosperity of our country."

Acting on this report and other consideration of the subject, the Legislature passed chapter 242, which became a law on the 19th of June. This statute permanently established a system of common schools, and by an amendment to the Constitution, article 9, section 1, adopted in 1894, the duty of maintaining such schools was expressly imposed upon the legislature.

CAPITAL PUNISHMENT.

The Assembly committee to which was referred the part of the Governor's speech relative to capital punishment, *ante,* p. 703, submitted the following report on the 12th of June:

"That they have maturely reflected on the subject committed to them, and with all due deference and respect weighed the suggestions and opinions of his excellency, and beg leave to submit the result of their deliberations.

We live in a christian country — and although it is the fashion of the day, to close the eye upon the great sun of revelation, and by the dim lights of reason to search in the nature of things for the sources of all human powers and rights, yet the committee cannot hesitate to bow implicitly to the revealed will of the Almighty. When in the sacred book which contains that will, they find it in substance written 'whosoever sheddeth man's blood by man shall his blood be shed,' they are astonished that any doubt can exist among those who profess to believe its sacred character, as to the right of society to punish with death. But there are some who refuse evidence to that sacred character, or submission to that paramount authority, which as the revealed will of God the scriptures demand.

To such it may be proper to urge other considerations on the subject. The common objection is — society can have no rights, except those which are transferred to them by

individuals. No individual independent of government, ever had the right to take the life of another; nor had any individual a right to take his own life. Therefore, individuals never could transfer to society a right over life; consequently government never had the power to punish with death.

That no man in any state of society has a right to destroy his own life, is undoubtedly true — but that one man never had the right, under any circumstances, to take the life of another is in the opinion of the committee, warranted neither by religion, reason, or nature.

If a state of social existence can be imagined, in which no power exists in the aggregate body to regulate the conduct, protect the rights and avenge the wrongs of individuals, the committee apprehend that in such a state, nature, reason and justice, would declare a power to inflict death vested in each individual. If in such a state any one endowed with superior strength, art and wickedness, should incessantly exercise his power in exterminating those around him, can we hesitate to believe that nature, reason, or necessity, point to the remedy and the punishment. Can it be denied that each individual of such a society would have the perfect right to preserve his own existence, and prepare for future safety by inflicting death on the destroyer? Or will it be pretended that in a state evidently presupposing a necessity for incessant labor to sustain life, individuals should abandon their own subsistence, and devote their time to the confinement of wretches, who if they were not removed from social intercourse, would exterminate the human race?

Surely the death of such offenders would be strictly just — it would be just because it would be necessary. Without it the human race must fall a sacrifice to strength, ambition and villiany. When sovereignties are legally established, individuals surrender the power of self protection, the right to repel and punish aggressors, to the govern-

ment, and with these they transfer the right to punish with death. The same principle which originally vested the right in individuals, when society is organized, ripens into a maxim, and justifies its exercise in the government. *Salus populi suprema lex*—is the paramount provision in every municipal code; and upon the indisputable justice and acknowledged expediency of this provision, founded as it is deeply in nature and in necessity, governments have for five thousand years exercised the right to inflict the punishment of death. The committee are not prepared with his excellency to doubt the existence of a right thus sanctioned, and thus universally acknowledged; and they are clearly of opinion, that (independently of the decisive authority of revelation) if the safety of society demands it, governments have the right, and are imperiously required to take the life of a criminal. That it is indispensable to the preservation and safety of the human race that certain crimes should subject the criminal to the punishment of death, is a position in the opinion of the committee, undeniable in theory and proved by experience. To what number and species of crimes it is necessary to annex this punishment, has been the subject of controversy in all ages and in all civilized nations. Perhaps no rule or limit can be safely and universally established; it must always depend on circumstances. The position of the state, its progress in science and civilization; its moral habits and religious character; the form of its government, with other considerations equally important, must ever influence legislatures in forming a criminal code and in graduating the scale of punishments. In our own state and country the committee believe, that capital punishments are restrained to as few cases as is compatible with the safety of our citizens and the preservation of social order.

The crimes punishable with death in this state, are treason, murder and arson. The committee mean no technical definitions; but however the crime of treason may be esti-

mated in communities where remorseless usurpers trample down human rights, yet in a state like this where the sovereignty is always in the people, where the constitution, the work of their hands, is a charter of liberties, where the laws are framed for their protection, and enacted solely for their safety and happiness no enemy can be more unnatural and detestable, more worthy of death, than that which aims at the destruction of all this moral and political felicity. What is it but to violate liberty in her last sanctuary — to forge chains for millions of freemen — to demolish the bulwark of human rights, and to blast the happiness of our race through a thousand generations. Does the man prepared for crimes like these deserve to live? Is it right that the monster should find his life protected by those very laws he is striving to prostrate? By those very men in whose blood he is ready to steep his sword? Is it safe for the State, for the people, for the world that a crime so dreadful, so inviting, so seductive to the aspiring spirit of man, should be checked by a threat of imprisonment only? Is it just or politic that such a liberticide should be punished in common with the petty larceny villain, who filches to clothe himself or feed his children? The committee cannot doubt that these questions will receive a loud and universal negative.

The murderer, the committee also think, cannot live with safety to society. He has exhibited a mind utterly depraved — prepared for every kind and degree of criminality — for it cannot be doubted that the man who in cold blood could slay his brother, is steeped too deep in guilt to permit any hope of self reformation, while he encumbers the earth. Nothing but that unmerited mercy which cleanseth from all sins, can redeem the wretch from the empire of hell, and restore his soul to a hope of salvation.

It seems to be an universal sentiment of our race, that the murderer 'shall be cut off from among the living.'

Cain who slew his brother felt the strict justice of this sentiment, when he cried, 'And whosoever shall find me will slay me.'

In every age whether savage or civilized; in every country whether christian or pagan, under every government whether free or despotic, the murderer has been punished with death. This universal and uninterrupted assent of all nations to the principle proves its foundation to have been deep in nature, in justice, and strictly consonant with the moral sentiments of mankind; and the universal resort to its exercise is little short of a demonstration of its necessity.

They err extremely who believe that man has not now the same depravity which existed centuries ago, or that the viler passions are not now as predominant in his nature and as destructive in their indulgence as heretofore; never perhaps were strong penal restraints more necessary to the preservation of society than at the present time.

Of all the passions that of revenge is the most strong, active and persevering; if to gratify this passion with blood, the murderer risks nothing but imprisonment with the ordinary chances of escape even from that, we shall soon see the dagger and the pistol triumph and scarcely a check to homicide remaining. Let infidel philosophers talk of death in what terms they may, the experience of five thousand years has taught that to the guilty mind he is truly the king of terrors; and while in full view he stands frowning on the unpractised murderer, he in numerous instances deters from the shedding of innocent blood. To abolish this punishment in this case, the committee think, would shock the feelings of mankind, violate the great rules of justice, and prove an experiment pregnant with bloody consequences.

Arson, or (as it is defined in our statute) the crime of burning a house known to the criminal to be inhabited, proves the mind of its perpetrator to be shorn of all its

moral beams. The midnight hour, the hour intended by the Creator for human repose, is the period which ushers the incendiary to his dreadful work. Imagination cannot fancy another crime combining such mean and lurking baseness with such audacious and fiendlike malignity. Death itself is scarcely an object of terror to a mind so utterly depraved, to a conscience so utterly hardened. And certainly that being who without the possibility of reward or personal benefit could put the fire brand to an inhabited dwelling and expose to a common grave, the father, the mother and the child, would laugh at ordinary perils and penalties, would deride your petty punishments and trample on all your exhibitions of mercy. The committee think that the removal of such beings from society is necessary not only to vindicate its justice, but to protect its order and preserve its very existence.

With these views of the subject the committee would solemnly demand what sound reason exists for abolishing penalties sanctioned by the wisdom of ages as just and necessary. Does christianity require it? No, the God of mercy is also a God of justice. Does humanity demand it? No—humanity shudders at the numerous victims which such a measure would immolate.

Consider what monsters would be continued in existence; monsters whose minds had become masses of moral pollution, and who, though chained for a season yet in the various revolutions of time, might be cast upon society to plot new treasons, to perpetrate new murders. Shall our minds yield to a sickly sensibility for suffering guilt, be melted into pity for traitors and murderers at the expense of innocent blood, and the overthrow of social orders? In the opinion of the committee such a course instead of affording proof of the progress of society in morality, civilization and religion, would indicate an increased laxity and a di-

minished virtue, a general state of false refinement incompatible with enlightened justice, genuine mercy, individual safety, or sound patriotism.

There may be cases where mercy should temper law and shield even a criminal from the sword of justice; but let not the shield of mercy be converted into a perpetual and general protection for guilt. When cases occur of less enormity surrounded by mitigating circumstances let that shield be interposed by the branch of the government in whose hand it is placed by the constitution.

Upon the whole, the committee are of opinion, that capital punishments are both expedient and necessary, and therefore justifiable, that in this state they are attached to as few crimes as is consistent with individual security and public safety, and that no alteration in the laws of this state relating to them is expedient or necessary."

1812. NOVEMBER. LEGISLATURE, THIRTY-SIXTH SESSION.

DANIEL D. TOMPKINS, Governor.

FIRST MEETING.

The Legislature met the 3d of November; the next day the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—A few days after the last adjournment of the legislature, a declaration of war was officially announced by the United States, against the United Kingdom of Great Britain and Ireland, and its dependencies. The great exposure of a vast range of our southern, northern and western frontier

to annoyance from the enemy, and to the depredations of savages in alliance with him, rendered the proclamation of hostilities during the recess of the legislature an event peculiarly interesting to the citizens of this state, and imposed upon the executive a task of immense responsibility and embarrassment. I considered it obviously a paramount duty to apply the resources which the foresight and liberality of the legislature had placed at my disposal, in such manner as not only to provide a security for the property and lives of the inhabitants of the frontiers, but also to subserve the national will by facilitating the operations of the general government for a vigorous prosecution of the war, as the most certain means of bringing it to a speedy and honorable termination. My endeavors to accomplish these objects have been generously seconded by the officers and soldiers of the militia.

It was to be feared whilst Great Britain held not only the dominion of the ocean, but was permitted to maintain an undisputed supremacy on the lakes also, that the burthen of the militia of this state in particular, in the first campaign of the war, would be extremely arduous. Accordingly most of the detached militia, together with a considerable number of independent uniform and volunteer companies, have been called into actual service, either at New York, Buffalo, Lewiston, Niagara, Oswego, Sackett's Harbor, Ogdensburgh or Plattsburgh or in frontier towns between those places. It affords me great satisfaction, however, to inform you, that it is confidently expected that the appropriation made in June last to meet the emergency of invasion or war, will be adequate to defray all the expenses hitherto incurred on the part of the state.

In reflecting upon the events and consequences of the war from its commencement to the present period, we find more cause of exultation than could reasonably have been expected, considering the pacific structure of our national government; the enjoyment of nearly thirty years of peace,

the smallness of our navy, the very limited number of our regular and disciplined troops, and a temporary deficiency of many munitions. Nearly as great a proportion of homeward bound merchantmen have escaped capture as has been customary during the last three or four years of peace. The market for the produce of the farmer has experienced an unexpected and unusual rise instead of a depression. Upon the ocean and the lakes, wherever our gallant tars have come in contact with the enemy, their conduct has given luster to the American character, and in some instances their achievements have been brilliant beyond example. It cannot but be expected that the general government, impressed with the propriety, the justice and the indispensable necessity of yielding more ample protection to our commerce, and of rendering the American nation more formidable in war, will increase our naval establishment to the extent warranted by the resources and spirit of the nation.

Although the surrender of the northwestern army is greatly to be deplored and tended to increase the difficulties which the militia of this state have had to encounter, and to retard the operations of government; and although the attack on Queenstown did not eventuate propitiously, yet it cannot for a moment be doubted that the issue of the contest will be glorious to our country. Reverses were to be expected in the first outset of inexperienced troops. These have originated not in a want of valor in our soldiers, or of resources in our country, but in the unavoidable difficulties, under existing circumstances, of directing the one and developing the other, on a sudden emergency, with the greatest advantage. In the attack of Queenstown, however, and in the affair of Brownstown, prior to the surrender of Detroit, and on various other occasions, the army and militia have invariably exhibited the deliberate and undaunted bravery of veterans.

I beg leave, respectfully, to recommend to your consideration the propriety of making suitable provisions for the families of those officers and soldiers of the militia of this state who have been disabled, or who have fallen in the battle of Queenstown.[1]

It has not been usual to protract the November meeting of the legislature beyond the time required to discharge the important trust of designating electors of president and vice-president of the United States. But an imperious duty requires that the case of John Bowman, convicted of the crime of murder before Mr. Justice Thompson, at the last court of oyer and terminer held in the county of Herkimer, be submitted to your immediate attention. The official communication of the presiding judge is now delivered. The unequivocal guilt of the convict on the one hand, and his tender years on the other, make your duty with respect to him, extremely delicate and responsible.[2] This is the only matter of an extraordinary nature which I shall at present press upon your notice. Should you, however, be disposed to devote attention during the present session to other subjects, upon an intimation of that intention, I shall do myself the honor of furnishing you, by special message, a detailed statement of the arrangements and proceedings which have been adopted subsequently to the declaration of war. In the meantime, I cannot refrain from seizing the earliest opportunity of suggesting some imperfections which experience has pointed out in the existing mode of

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1 The Legislature adopted a concurrent resolution requesting the Governor to apply to the general government for information as to what provision would be made for the families of those officers and soldiers of the militia who had been disabled or had fallen in battle. The Secretary of War replied to this application in a letter which was communicated to the Legislature by the special message of March 25.

2 By chap. 1, passed November 10, 1812, the sentence of death in the case of John Bowman was commuted to imprisonment for life. The records show that he was only nine years of age, and had murdered a female child between four and five years of age.

detaching militia for public service, that the application of suitable remedies may be the subject of your reflection during the recess of the legislature.

All persons above the age of forty-five years, amongst whom it is to be presumed the greatest proportion of wealth is distributed, and a great variety of persons under that age, are exempt from military duty altogether in time of peace, and there is no provision which subjects them to any contribution or duty in time of war. Besides, the penalty for the disobedience of those who are liable to militia duty and who are detached for actual service is pecuniary only, and the fine is neither appropriated to the benefit of those whose circumstances do not enable them to evade actual service in that way, nor to provide substitutes for those who elect to pay the penalty. The consequence is, that an affluent portion of the community do not participate in the dangers and burthens of service at all, and many of the most wealthy of those who may be detached, avoid taking the field by the payment of a trifling amount, scarcely exceeding the value of the requisite clothing and equipments to fit a soldier for service; whilst the more indigent, perhaps with young families to support, are alone subjected to the sacrifices of supporting the government and defending the lives and property of their fellow citizens, and receive a compensation, which in comparison with their earnings at home, is but a mere pittance. Every principle of policy and justice requires, that some other system be devised by which the hardships and perils of defending the country shall be more equitably diffused.

GENTLEMEN.— Notwithstanding differences of opinion upon a variety of local and other subjects may exist amongst us, yet in the propriety of respecting and yielding our exertions to support the national will, constitutionally expressed, and to preserve the rights, honor and character of the American nation unimpaired, we must all heartily concur. Inspired by these sentiments, our united efforts,

under the smiles of Providence, cannot but be honorable to ourselves and conducive to the lasting happiness and prosperity of our beloved country.

DANIEL D. TOMPKINS.

Albany, November 3, 1812.

SPECIAL MESSAGES.

November 3. To the Senate:

Objections by the Council of Revision to a bill passed at the last session "concerning the judges of the supreme court."

"Because the constitution having recognized the supreme court in its organization and powers as existing under the colonial government, derived from those of English common law, courts of king's bench, common pleas and exchequer; in none of which courts, colonial or English, have the number of judges at one time exceeded five, that number seems to be the common law maximum, according to immemorial usage not to be exceeded but by an express act of the legislature, in conformity to the declaration of the constitution that such parts of the common law of England, as composed part of the law of the colony should be and continue the law of the land, subject to such alteration and provisions as the legislature of this state should from time to time make concerning the same.[a]

Because the bill authorizes the honorable Senate and Assembly, by concurrent resolutions, to direct the extension of the limitation of five judges to an indefinite number; thus evading the constitutional revision of this Council, and precluding it from expressing its opinion, whether existing circumstances render it consistent with the public good to enlarge the number in a case in which this council must constitutionally be presumed eminently qualified to

[a] Const. 1777, §§ 24, 35.

form a correct judgment on the subject, as its constituent members, or the executive and the judicial officers presiding in the superior courts of original jurisdiction of the State.[b]

Because the bill, from its nature and object, is indefinitely prospective, and the powers granted by it incapable of being exhausted by successive concurrent resolutions; thus not only destroying the independence of the Council, by exposing it to be borne down by the introduction of new judges, whenever its measures do not comport with the opinions of a major part of the members composing the honorable the Senate and Assembly, but placing the Council in absolute subserviency to them, instead of forming the check the constitution intended upon this proceeding.

Because, if the bill should become a law, and concurrent resolutions should be passed during the present session for the appointment of one or more judges, this number might be doubled in the next session, and subsequent members of the legislature might increase them, by the same means, an hundred fold; and thus the salutary efficacy of the judiciary might be virtually impaired, and the people of this state be burthened with a useless and intolerable expense, unsanctioned in the forms prescribed by the constitution, or by the constituted authority, to whom collectively, each acting in the sphere assigned to it, the constitution has committed these important and incommunicable powers.

Because the bill provides not only for the increase of the judges indefinitely, in consequence of a resolution of the two houses of the legislature, but provides also that judges so to be appointed shall receive the like compensation as the other judges, thereby enabling the two houses of the legislature, at any future time, by concurrent resolution,

[b] Const. 1777, § 3.

to make a permanent appropriation of money without the sanction of law."

The bill was not passed over the veto.

November 11. Thanking the Senate for its address.

November 11. To the Assembly:

"GENTLEMEN.—Pursuant to the suggestions which I had the honor to make in my public communication at the opening of the session, I now do myself the honor to lay before you a statement of the proceedings which have been adopted during the present war, in relation to the security and defence of this state by the militia. The statement is as minute and specific as the shortness of the intervening time, and the pressure of other official concerns, has permitted. I flatter myself this communication will be regarded, also, as a substantial and satisfactory compliance with the request contained in the resolutions of the honorable the Assembly, passed on the 5th instant.

In pursuance of the act of Congress, entitled 'an act to authorize a detachment from the militia of the United States,' passed the 10th day of April last, the President of the United States, by an order under date of April 15th, required the Commander in Chief of this state to detach, organize, and hold in readiness for public service, 13,500 militia, including officers, being our quota of the 100,000 men, provided for by the last mentioned act. Orders to that effect were accordingly issued without delay, and on the 18th day of June last, the said quota was organized into divisions, brigades and regiments, as will appear by the general orders upon that subject, a copy whereof, marked A, accompanies this message. Previously to that organization, and antecedently to the declaration of war, and, as I presume, in anticipation of that event, a communication was received from the Secretary of the War Department, announcing a requisition by the President, of

a detachment of the militia of this state, for the protection and defence of the northern frontier thereof, and requesting me to issue the necessary orders for that purpose. From four to six hundred men were to be stationed at Niagara; two hundred at Oswego, and from six to eight hundred at some convenient place near the mouth of Black River; with authority for me to make such alteration in the apportionment as I should judge proper. Upon the receipt of that order, measures were immediately taken to carry it into effect. Major General Widrig, was directed to detach from that part of his division composed of Oneida, Herkimer, Jefferson, Lewis and St. Lawrence counties, 600 men, to be stationed at Sackett's Harbor. Brigadier Generals Ellis, Hurd, and Miller, of Onondaga, Madison and Cortland counties, were to furnish their quotas of 400 men, to be stationed at Oswego; and Major General Hall was directed to detach and organize 600 men, including officers, from his division, composed of the infantry in the counties of Cayuga, Seneca, Ontario, Steuben, Genesee, Niagara, Chautauqua and Cattaraugus, to proceed to Niagara. The whole number required for Niagara were volunteers, and all, except one company, were volunteers, under the act of Congress of the 6th of February last. The last mentioned volunteers, amounting to 470 men, are still in service at Black Rock. The detachment destined for Sackett's Harbor mustered about 480 men, including officers; they served ninety days, and were then relieved. One company of the detachment for Oswego consisted of volunteers under the act of Congress, passed the 6th of February, 1812; and the residue were volunteers generally. The above mentioned detachments were not organized and in service, until the month of May last.

The official notice of the declaration of war was not accompanied by any further requisition or direction to reinforce the detachments above mentioned, or to station troops on the Champlain frontier, the inhabitants of which

were imminently exposed, both to invasion by the enemy and to the depredations of savages. I did not, therefore, hesitate to decide, that an emergency existed which not only authorized, but imperiously required me to exercise the discretion confided to the Commander-in-Chief by the sixty-eighth section of the militia law of this State; and accordingly the detached militia of Washington, Essex, Clinton and Franklin, and one company of Lieutenant-Colonel Thorn's regiment of artillery, were placed under the command of General Mooers, for the purpose of extending protection to the inhabitants of the Champlain frontier. The troops previously stationed at Niagara were directed to be reinforced by the detached quota of Ontario, Genesee and Niagara counties; and to the end that competent security might be afforded to the counties of Jefferson, Lewis and St. Lawrence, the detached militia of those counties and of Oneida, together with the troops previously posted at Sackett's Harbor, were placed under the command of General Jacob Brown. A small reinforcement of volunteer uniform corps was also sent to Oswego. Upon being advised of those arrangements, the President of the United States approved and confirmed them; and the troops were thereafter considered in the service of the United States, and have been paid accordingly. Additional quantities of arms and ammunition, and all the camp equipage under my control, were forwarded immediately to the frontier arsenals and posts.

Very few of the militia were called upon for the safety of New York or Long Island, until the 27th day of August last, when, in consequence of a requisition for that purpose, a company of volunteer militia of that city, and sundry independent uniform companies of the city of Albany, and of the cities and villages on the margin of the Hudson, amounting in the whole to about 530 men, including officers, were stationed in the state fortifications at the Narrows. Their time of service will expire on the 27th instant,

as they were called out upon a requisition made under, and pursuant to the act of Congress, passed 22d February, 1795, and are not, therefore, liable to serve more than ninety days after arriving at the place of their destination.

In consequence of other requisitions, the first and second detached regiments of infantry; the greatest part of the first brigade of state artillery; one company of riflemen, and a volunteer troop of cavalry, were directed to take the field on the 15th day of September last, for the protection of the city of New York and its vicinity. A small force has also been deemed necessary for the safety of the inhabitants of Suffolk county.

Upon several similar requisitions, the ninth detached regiment of militia; three small companies of light infantry; two additional companies of artillery, and one troop of cavalry, and a company of riflemen, were marched to the northern frontier, and are stationed in Clinton and Franklin counties. Some of the companies were volunteers for one year's service. The infantry marched about the sixteenth, and the residue of the troops on the 19th of September. The fourth detached brigade of infantry, with one company of horse artillery, and four companies of foot artillery, upon the like requisition and orders, marched to the north-western frontier about the first day of September, and are stationed at Sackett's Harbor, Cape Vincent and Ogdensburgh.

The 6th and 7th brigades of the detached militia, and several independent companies, have, in like manner, been called into service for the security of the western frontier. The result is, that of volunteers for one year; volunteers and militia detached for six months service, and corps called upon for three months, pursuant to the provisions of the act of Congress, passed 22d February, 1795, there are now in actual service, according to the best estimate

I am able to make at present, the following numbers of the militia of this state, viz:

At New York, and on Long and State Island.....	2,200
At Plattsburgh and the frontier towns of Clinton and Franklin counties	1,300
At Sackett's Harbor, Cape Vincent, Ogdensburgh, and elsewhere on the St. Lawrence, about.....	2,400
At Oswego	450
At Buffalo, Black Rock, Schlosser, &c.....	2,250

The militia and regulars on the Niagara station were at first commanded by Lieutenant Colonel Philetus Swift, then by Brigadier General Wadsworth, afterwards, for a short time, by Major General Hall, and, upon and after his arrival, by Major General Van Rensselaer, all of the militia. The troops at Oswego have, from the time of their arrival at that post, been commanded by Lieutenant Colonel George Fleming, of the militia. The detachment in service at Sackett's Harbor before the war, was under the command of Lieutenant Colonel Bellinger, of the militia. After the war, and the arrival of reinforcements, the detachments from the army and militia on the frontier, extending from Sackett's Harbor to St. Regis, were commanded by Brigadier General Brown, of the militia, until the arrival of the fourth detached brigade of militia, when the commandant of that brigade, General Dodge, being the senior officer, assumed and now holds the command of the last mentioned district of frontier. Brigadier General Pettit commands the militia at Plattsburgh and its vicinity, but General Bloomfield, of the army, being superior in rank, has, since the month of September, had the superintending command of the whole force on that station. The corps formed of independent companies, stationed at the Narrows, is commanded by Lieutenant Colonel Robert Swartwout, of the militia. That part of the first brigade of artillery in service, is under Brigadier General Morton of

the militia. The first and second detached regiments of infantry, with the riflemen and cavalry, are commanded by Lieutenant Colonels Jonas Mapes and Beekman M. Van Beuren, of the militia; and the whole are under the superintending command of General Armstrong, of the army, who is the superior officer in service on the New York station.

There are sundry requisitions, orders and other papers, relating to the militia, in the possession of the Adjutant General, whose absence from the seat of government prevents my having immediate access to them. But the preceding statement, and the documents hereto annexed, will, I hope, amply explain the authority and principles upon which the militia have been called into service; the object of their service; the times when they were called upon; the principal general orders and instructions which have been issued and given; the number now in actual service; where stationed, and by whom commanded.

DANIEL D. TOMPKINS."

Albany, November 11, 1812.

November 11. In his reply to the Assembly's address, the Governor said:

"With respect to the militia on duty at New York, you must indulge me in observing, that they belong to that city and the adjoining counties, with an exception of some uniform corps from the cities and villages situate on the margin of the Hudson. The transportation of these was more expeditious and less expensive to New York than to any other point, or of any other equally suitable troops to the same point. Although it is very evident that the appropriation of part of a given force to the defence of our frontier, so far impairs the effective strength which might otherwise have been applied to the protection of another; yet, when I reflected upon the importance of the

city and harbor of New York to the interests of the state and of the union, and considered what description of troops were best adapted to its defence, I was not without a confident hope that the destination of the uniform corps before mentioned would be regarded as perfectly impartial and judicious.

It is certainly reasonable and just that the general government should extend to the militia who may be wounded or disabled, and to the families of those who may be killed, in the employment of the United States, the same provision which it makes for the army in like cases. Accordingly, with one exception, the same provisions are made, which I am apprehensive have escaped your notice. All militia officers, non-commissioned officers and privates, who enter into service according to the act of Congress, passed the sixth of February last, and who may be wounded or disabled, are entitled to be placed on the pension list, and one hundred and sixty acres of land are to be given to the heirs and representatives of such as shall be killed or die in actual service. The act of Congress organizing the militia of the United States, also expressly declares, that if any person, whether officer or soldier, belonging to the militia of any state, shall be ordered into the service of the United States, and be wounded or disabled while in that service, he shall be taken care of and provided for at the public expense. But even if the only omitted case, of an allowance for the families of the detached militia, or of the three months men, who may die in service, were provided for, it would nevertheless be worthy of the State of New York to stimulate others to emulate the example of the brave, and at the same time pay a just tribute to valor, by bestowing upon the families of those heroes of its militia who fell at Queenstown, a liberal bounty beyond that allowance.

I am free to say, that my opinion of the constitutional extent to which the services of the militia may be required,

is embraced in the terms of the act of Congress, passed in February, 1795. That act contains the contemporaneous construction of the national constitution upon that point, sanctioned and practised during the administration of the illustrious Washington; and I do not recollect to have received or seen, nor am I conscious of having myself issued, any orders or instructions incompatible with that construction.

The importance of the topic relative to the employment of the militia, contained in your address, and my loss for the application of the allusion to unauthorized orders upon that subject, required this exposition; and having performed that duty, I conclude with a humble supplication, that He who governs the destinies of the world, will extend his beneficent hand to the protection of our beloved country, and safely conduct us through the perils of a war forced upon us by the aggressions and injustice of other nations."

November 11. The Legislature adjourned to meet the second Tuesday of January, 1813.

1813. JANUARY.

SECOND MEETING.

The Legislature met on the 12th of January.

SPECIAL MESSAGES.

January 13. To the Senate: Transmitting the proceedings in the trial of Mary Cool who had been convicted of murder at the Ulster Oyer and Terminer.[3]

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[3] Mary Cool was pardoned by chap. 8, passed January 20, 1813.

January 14. To the Assembly: Transmitting the annual return of the militia.

January 19. To the Senate: Transmitting the resolution adopted by the North Carolina legislature, proposing to amend the federal constitution requiring the election of representatives in Congress and Presidential electors by single districts to be established in the several states, and not to be altered except after a federal census.

In the same message, the Governor said:

"You must pardon me for seizing this opportunity respectfully to mention that an amendment, submitted by Congress some years since, and sundry amendments offered by state legislatures have been before the legislature of this state, for several years past, and have not, as I am advised, been disposed of or acted upon."[4]

February 10. To the Assembly: Transmitting the annual report of the Inspector General of staves and heading.

February 16. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

February 20. To the Senate:

"GENTLEMEN.—In compliance with a resolution of your honorable body, passed the 15th inst., the following statement of expenditures in and about the fortification and defence of the port and harbor of New York, since the first of July, 1807, is respectfully submitted.

In erecting fortifications on the westerly side of the Narrows, in Richmond county, there has been disbursed about..... $115,000.00

4 On the 3d of April, the Senate adopted a resolution reciting that a bill ratifying the amendment relative to titles of nobility had been rejected by the Senate on the 12th of March, 1812, and directing that the Governor be informed of this action.

In building an arsenal on the same ground.	$2,400.29
In the purchase of land.....	7,530.00
In building an arsenal, laboratory workshops, keeper's dwelling house, &c. in the city of New York.....	26,486.12½
In the purchase of a ten acre lot in the 9th ward, and in the erection of a magazine, keeper's lodge, &c. thereon.....	8,253.07
	$159,669.48½

There remains also a balance of about ten thousand dollars of the fortification fund to be expended.

The amount of monies paid out for ordnance, garrison carriages and other munitions, intended and adapted exclusively, or principally, for harbor defence, is not included in the preceding statement. The accounts and vouchers for the last mentioned amount, have been blended with those which have been from time to time rendered by the commissary, for the purchase of munitions for the state, and is not, therefore, ascertainable, without a minute examination and separation of the commissary's accounts and vouchers for the last five years.

No statement or estimate of the value of donations in lands made by the state of New York to the United States, for sites, for arsenals, fortifications, &c. is included in this message, under an impression that it is not required by the resolution of the Senate.

DANIEL D. TOMPKINS."

Albany, February 18, 1813.

February 20. To the Assembly:

"GENTLEMEN.—I have the honor to lay before you a communication from the Commissioners of Fortifications. The sum of twenty-five thousand dollars, appropriated by an act of the 12th of June, was advanced to the commis-

sioners in July last. There remains of the sums already granted for fortifications, about ten thousand dollars unexpended.

The subject of this message will naturally invite your attention to further measures for extending security, as well to our commercial metropolis, as to the inhabitants of the Northern and Western Frontier of the State. Whether this object can be best attained by the application of a part of the annual revenue of the state in the erection of fortifications, or in building a frigate at the city of New York, and a corvette upon one of the lakes, will be decided by the wisdom of the legislature.

I do not hesitate to recommend suitable appropriations, to provide for the further security of our frontier brethren, to be expended in such way as the legislature shall deem best adapted to that end.

DANIEL D. TOMPKINS."

Albany, February 19, 1813.

February 22. To the Senate:

"GENTLEMEN.—An act, passed March 18, 1808, directs the mode of proceeding to obtain for the public the title of such lands on Long and Staten Island and the island of New York, as may be required, for the purpose of providing for the defence and safety of the city and port of New York.

It has been judged necessary to erect a work at Sagg Harbour, in Suffolk county, and at other frontier positions; but the title for the sites therefor cannot be obtained in the manner pointed out in the before mentioned act, because those works are not designed for the defence of the city and port of New York. I therefore respectfully suggest the propriety of extending the provisions of the act of 1808 to lands in other parts of the state, which may be required for the defence of such other parts, and of em-

powering the chancellor, where it shall appear to him just and proper, on account of interest, relationship or other disqualifications of the sheriff of the county in which the lands may be situated, to direct the writ to be executed by and before some other officer; and also authorizing the chancellor, at his discretion, to order that the inquisitions be taken at the expense of the public, by foreign or struck juries.[5]

DANIEL D. TOMPKINS."

Albany, February 22, 1813.

February 23. To the Assembly: Announcing the death of General Peter Gansevoort, Jr., one of the regents of the University.[6]

February 24. To the Senate:

"GENTLEMEN.—A number of the Chiefs and Warriors of the Christian party of the Oneida Indians, have recently visited this city upon public business, and, amongst other things, proposed to sell to the state, a part of their reservation adjoining the Stockbridge tract, embracing six miles in length and three in breadth. On account of the dissatisfaction which has heretofore been given to some of the principal Indians, by bargaining for their lands at this place, with a part only of the nation, on account of the expenses incident to such purchases, and the many individual claims for improvements subsequently made, it was deemed advisable to inform them, as they had been before advised, that all treaties for future purchases of their lands would be made with a full council at some convenient place on the reservation.

[5] Chap. 204, passed April 13, provided for a struck jury in the discretion of the Chancellor in proceedings for the assessment of damages on taking lands for the use of the United States.

[6] Smith Thompson and John Woodworth were appointed regents in place of General Peter Gansevoort, Jr., deceased, and Ebenezer Russell, resigned.

Since, however, they have intimated a disposition to sell, I submit to the Legislature, the propriety of authorizing purchases from time to time, as they can be made, with advantage to the state, and satisfaction to the Indians. Should such authority be given, it will also be necessary to provide for the payments, which it may be proper to make at the time of executing such treaties.[7]

DANIEL D. TOMPKINS."

Albany, February 20, 1813.

February 24. To the Senate:

"GENTLEMEN.—Herewith you will receive a communication from his honor the Chancellor, relative to the general fund of the court of chancery. The object to which he advises the application of the amount now in the Registry Department, is so important to the public, that the subject will, doubtless, receive your early and serious consideration.[8]

DANIEL D. TOMPKINS."

Albany, February 24, 1813.

The following is the communication from the Chancellor:

ALBANY, *February* 23, 1813.

SIR.—In the management of the general fund of the Court of Chancery, $1400 have been saved, which now remains in the Registry Department, subject to the disposition of the hon. the Legislature. Perhaps part of it could

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[7] Chap. 130, passed April 5, authorizing the Governor to negotiate a treaty with any Indian tribes for the purchase of their lands, and appropriated $3,000 for this purpose.

[8] The Legislature adopted the Chancellor's suggestion, and by chap. 93, passed April 2, authorized him to have the minutes of the Court of Chancery transcribed, and when compared and authenticated by him, such transcribed minutes were to have the same force and effect as the original. The expense was to be paid out of the chancery fund as suggested in the Chancellor's letter.

not be more appropriately applied, than to the engrossing the minutes, mentioned in a former communication to your excellency, in the effectual preservation of which many of the citizens of this state have a deep interest, and which are now exposed to interpolations and suppressions, not to be prevented or detected by the utmost vigilance of the officers, to whose keeping they may be entrusted.

I have the honor to be, very respectfully,

Your Excellency's most obedient servant,

JOHN LANSING, JUN.

His Excellency Daniel D. Tompkins, Esq. Governor, &c.

March 2. To the Legislature, announcing the resignation of Ebenezer Russell, one of the regents of the University. [See note 6.]

March 5. To the Senate:

"GENTLEMEN.— The United States having no arsenal or military deposit at this place, it has been necessary to admit into the state arsenal a principal part of the ordnance, arms and ammunition belonging to the general government. Some time will elapse before a separate arsenal can be erected and fitted to receive the military stores of the United States. The greatest part of those belonging to the state, and which were formerly in this arsenal, has been removed to the arsenals at Rome, Watertown, Onondaga, Batavia, Russel, Elizabethtown and Plattsburgh, or left in the arsenal at New York. It will therefore accommodate the United States, and be no material detriment to the interest or security of this state, were the Legislature to authorize the sale to the United States for their immediate accommodation of the arsenal and ground in the Colonie belonging to the state, and to apply the consideration money to the erection of a new arsenal and appurte-

nant buildings. Application has been made to me upon the subject, and I therefore respectfully submit it to the consideration of the Legislature.[9]

DANIEL D. TOMPKINS."

Albany, February 27, 1813.

March 6. To the Senate: Transmitting the report of Commissioners appointed pursuant to an act of June last, to explore and mark out a road between Albany and the river St. Lawrence.

March 12. To the Senate:

Objections by the Council of Revision to a bill "to amend an act entitled 'An act concerning the clerks of the supreme court of this state, and for other purposes.'" [10]

"Because by the 2d section of the said bill, it is made the duty of the Supreme court, by rules or orders, to compel the officers of the said court to pay to the treasurer of this state the monies which may from time to time, be due to the people of this state, from the said officers for clerk's fees; thereby compelling the said court to collect the said debts due from the attornies of the said court, by process of attachment and commitment as for a contempt, or by suspending the said attornies from practice, or striking them off the roll as for a misdemeanor in practice, or other contempt of the court. The Council are not advised that the supreme court have any other mode by which they can cause the said debts to be collected; and they consider this mode not proper for the collection of debts due to the state,

[9] The suggestion that the Colonie arsenal be transferred to the federal government was not adopted. See special message February 27, 1815, and accompanying note; also L. 1815, chap. 225, *post*, p. 828.

[10] This bill, relative to Supreme Court clerks, was not passed over the veto, but an act on the same subject was passed and became a law, chap. 99, on the 2d day of April.

inasmuch as the party would be deprived of trial by jury,[c] and be put to answer upon interrogatories; and inasmuch as the proceeding has never been applied to any other than cases of abuse and misdemeanor in practice, or other contempt committed against the privileges and authority of the courts."

March 15. To the Assembly:

"GENTLEMEN.—Herewith, you will receive the Commissary's report and statement of the Military Stores, belonging to this state. The accounts and vouchers for the expenditures therefor, and for the defence of the frontiers, as well as the accounts and vouchers of the Commissioners of Fortifications, have been rendered to the Comptroller.

Balances of many of the appropriations heretofore made for defence, and for procuring arms, and for other military purposes, remain unapplied.

Of the 25,000 dollars granted by the 13th section of the act, passed 12th June, 1812, for fortifications at New York, there remains unexpended about 10,000 dollars.

Of the sum appropriated by the 8th section of the same act, to meet the immediate expenses of the emergency of a declaration of war, in the recess of the Legislature, there remains unexpended 12,500 dollars; and nearly the whole that has been laid out, ought to be, and doubtless will be, reimbursed by the General Government. It will, therefore, be necessary to authorize the Comptroller, or some other person, to adjust the account therefor with the United States, and to receive and pay the amount into the treasury of this state. The items and amounts of those expenditures are particularly and separately specified in my accounts and vouchers, at the Comptroller's office.

No part of the 20,000 dollars, appropriated by the 13th section of the aforesaid act, has been drawn since the passage of the act.

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[c] Const. 1777, § 41.

There remains yet unexpended, nearly 25,000 dollars of the sum granted for procuring muskets, rifles, pistols and swords, but there are existing contracts for muskets and rifles, upon which considerable sums will hereafter become due.

The appropriation in the 6th section of the act of June last, being for a variety of objects, the expense of which could not possibly be previously determined with any degree of certainty, has been exceeded. The articles provided for by that section, were cannon balls, shells, powder, fixed ammunition, tents, knapsacks, camp kettles, and all other needful articles.

Under the authority conferred by the 14th section of said act, capacious and suitable arsenals have been erected in Genesee and Franklin counties, and a small Arsenal has been added to the fortifications and buildings belonging to the state, in Richmond county.

Some expenses of a miscellaneous kind, not coming strictly within the words of any of the appropriations, and of course not regularly chargeable to either, have been incurred in consequence of the war. They do not amount to more than 2,000 dollars. The accounts and vouchers therefor have not, for the reason before mentioned, been submitted to the comptroller. I would respectfully suggest the propriety of authorizing the payment, out of the unexpended balances of the existing appropriations, of such part of those miscellaneous expenses, as the vouchers therefor may show to have been necessarily advanced for public purposes.

On the 4th day of February, 1812, I had the honor to address a communication to the chairman of the military committee of the Legislature of this state, proposing amongst other things, to provide for encamping and disciplining 2,000 volunteer artillerists, for the defence of New York, and 2,000 infantry for the defence of the northern and western frontiers of this state. Those volunteers were to

be considered as the advanced corps, to be called upon instead of militia, and they would undoubtedly have been an excellent substitute for an equal number of detached militia, whenever the latter should have been legally called upon for actual service.

Such volunteer corps ought to be officered by assignment from the militia officers now in commission, or if an entire company, battallion or regiment should volunteer, the officers who now command them ought of course to retain their command. The non-commissioned officers and privates might be armed by the public, and allowed an extra compensation beyond that which is paid to militia by the United States. The amount of such extra compensation would be inconsiderable. The duties of the soldier would in that case be voluntarily assumed, and the burthen and expense of public defence would be more equitably diffused than it is at present. The poorer classes of militia in that manner, might be relieved from the very disproportionate and unreasonable risk and sacrifices for the public safety to which they are subjected under the present militia system. The Legislature did not think proper then to adopt the proposition. Deeply sensible of the importance of securing our maritime metropolis, and the frontiers generally, I take the liberty of renewing that proposition, modified according to the circumstances which have since transpired. The organization of two regiments of uniformed volunteer light infantry, of one thousand men each, for the defence of the southern frontier of the State, and three regiments of infantry for the northern and western frontiers, would be a measure of great public accommodation; these regiments not to be called into service or pay, except instead of so many militia of this state, as may be called upon to take the field, pursuant to the constitution and laws; and when in service the volunteers to receive from the state, in addition to the pay allowed by the existing laws of the United States,

a liberal and adequate compensation for clothing. That extra allowance ought not to be less than four dollars and fifty cents per month, to the uniformed corps, and to those not uniformed, at least two dollars per month.

DANIEL D. TOMPKINS."

Albany, March 13, 1813.

March 25. To the Senate:

"GENTLEMEN.—Pursuant to concurrent resolutions of the hon. the Senate and Assembly, I have endeavored to ascertain what provision will be made by the general government for the families of those officers and soldiers of the militia, who have been disabled or have fallen in battle, and have the honor herewith to lay before the Legislature the answer of the secretary of the war department to my communication on that subject. [See note 1.]

DANIEL D. TOMPKINS."

Albany, March 25, 1813.

The following is the communication from the Secretary of the War Department:

WAR DEPARTMENT, *March* 9, 1813.

SIR.—I have had the honor to receive your Excellency's letter of February 22d, enclosing a resolution of the Senate and Assembly of the state of New York, asking 'what provision will be made by the general government for the families of those officers and soldiers of the militia, who have been disabled or have fallen in battle.' In answer to which, I have to inform your Excellency, that there appears to be no law which provides generally for any allowances to this description of sufferers. Special provision has heretofore been made, as well for those who served in the late campaign on the Wabash, by act of April 10th, 1812, as in former acts making similar provisions for the militia employed in the western campaigns under generals St. Clair

and Wayne. I have no doubt but that the importance of the subject will again engage the attention of Congress, and that the humane and equitable foresight of the Legislature of New York will be duly appreciated.

With great respect,
I have the honor to be
Your Excellency's
Most obedient humble servant,
JOHN ARMSTRONG.

April 1. To the Senate:

"GENTLEMEN.—In the course of the last three or four years, I have had occasion to communicate to the Legislature several proposed amendments to the Constitution of the United States, and the proceedings and decision of the Legislature of other states thereon. I am not apprised that any of the said proposed amendments have ever been acted upon by the Legislature of this state. The enclosed is a copy of a communication which I have recently received from the Department of State. No satisfactory answer can be given to the request therein contained, until the Legislature of this State shall be pleased to consider and dispose of the proposed amendment submitted by Congress; and I therefore respectfully solicit the early attention of the Legislature to that subject. [See note 4.]

DANIEL D. TOMPKINS."

Albany, April 1, 1813.

The following is the communication from the Department of State:

DEPARTMENT OF STATE, *March* 23, 1813.

SIR.—Some time since was transmitted from this Department, to the Executives of the several states to be submitted to the Legislatures thereof, a resolution of Congress proposing an amendment to the Constitution of the United States, which had for its object the prevention of any citi-

zen accepting any title of nobility, present, pension, or office, from any foreign prince or power. As the decisions on this resolution, of the Legislatures of some of the states, and among them that of New York has not been received, I have to request your Excellency to furnish me with an authenticated copy of the same, with a view to ascertain the fate of the proposition in question.

I have the honor to be,
With great respect, sir,
Your obedient servant,
JAMES MONROE.

April 1. To the Assembly:

"GENTLEMEN.—In conformity with the request contained in their resolution of the 18th instant, the honorable assembly are respectfully informed that 2000 muskets belonging to the United States, were drawn by me for the use of the state arsenals; and that about 500 of the muskets loaned by the United States to this state, and distributed in the year 1798, have been collected and deposited in the state arsenals. The requisition for the before mentioned 2000 stands of arms for the use of this state, was in general terms and did not refer to any particular act of Congress.

The honorable assembly in their said resolution, also request information, relative to the distribution of arms which may have been made to the several states and territories other than the State of New York, under the act of Congress, passed 23d of April, 1808. I am wholly unacquainted with the transactions of the executive authority of other states and territories of the United States in that respect, and possess no means of obtaining an official statement or return thereof. It is therefore out of my power to furnish the honorable assembly with the information required by the last clause of their said resolution.

DANIEL D. TOMPKINS."

March 30, 1813.

April 1. To the Assembly:

"Pursuant to the request contained in the resolution of the Honorable Assembly of the 18th instant, I have the honor to inform them, that there has been advanced by the war department of the government of the United States for the purpose of defraying the expense of defending this state since the second day of April, 1812, five hundred and sixty-nine thousand one hundred and seventy-two dollars, and eighteen cents, which sum has been advanced and paid to and by me in the following manner, and has been applied to the following objects:—

The detachment of the militia of this state of 1600 men ordered into service for the safety of the frontiers, previously to the declaration of war, was not immediately provided with camp equipage by the United States, nor was this state at that time supplied therewith. The objects therefore, to which the sum of ninety-six thousand, seven hundred and sixty-nine dollars and nine cents, part of the aforesaid amount has been applied, have been various. A part has been expended in procuring camp equipage, for the first detachment—a part in defraying the expenses of transportation of baggage, and accommodation, and contingent expenses of militia, volunteers and other corps on their march to the frontiers—a part in providing fuel and barracks, huts, or other quarters for the accommodation of the said militia and volunteers, upon their arrival on the frontiers, and in addition to the above objects, most of the disbursements for foraging for the whole army on the Niagara frontier, as well regulars as militia, and volunteers, and in building

boats, erecting works, and contingent expenses, passed through the hands of the Quarter Master's department of militia until about the 28th day of October last... $96,769.09

In consequence of authority and directions for that purpose, two Paymasters of militia were selected by me, who respectively gave bonds with adequate security for the performance of the trust reposed in them. Major Samuel Edmonds, and Major Nathaniel Allen, were the persons so appointed; the former as paymaster of the militia and volunteers who had gone or might go into service on the northern frontier, at that time commanded by Major General Mooers, and Mr. Allen was to be paymaster of all the militia and volunteers, which had been or might be called out on the frontier commanded by Major General Van Rensselaer, extending from St. Regis on the north, to the Pennsylvania line on the west. It was found however in November last, that the duty of paymaster for so extensive a district as the latter was too arduous for an individual, in consequence of which Thomas P. Baldwin was appointed to finish the payment on the northwestern frontier and gave satisfactory security for the performance of the trust reposed in him. Abijah Yelverton, Jun. was Paymaster for the regiment stationed at Oswego, and of the three companies of volunteers for a year, who upon the discharge of the militia at Oswego, repaired to Sackett's Harbor. Mr. Pompelly, of Owego, in Broome County, was paymaster of the 17th Regi-

ment of detached militia of this State, commanded by Lt. Col. Thompson Mead, and Daniel Adams was and is paymaster of the Regiment of volunteers for a year, commanded by Lt. Col. Francis McClure. To these several paymasters the following sums have been advanced by me, out of the amount furnished by the war department as aforesaid for the pay, subsistence, clothing, and other objects, coming exclusively within the Paymaster's department for the militia and volunteers.

To Major Samuel Edmonds for the northern frontier	$69,761.11
To Major Nathaniel Allen for the troops of the northwestern and western frontier	288,700.00
To Abijah Yelverton, Jun. Paymaster of the Oswego detachment	15,250.00
To Col. Mead, for Mr. Pompelly, Regimental Paymaster of the 17th detached Regiment.	8,000.00
To Paymaster Daniel Adams of the Regiment of Volunteers commanded by Lt. Col. McClure	3,500.00
To Thomas P. Baldwin for the St. Lawrence frontier	44,000.00
To Major Samuel Edmonds for the militia recently at Sackett's Harbor	20,000.00

Paid by myself in the name of the respective district paymasters for pay, subsistence and forage to Major General Van Rensselaer and suite, to Brigadier General Dodge and suite, to Brigadier General Jacob Brown, and to a great number of subordinate commissioned officers, who had either received advances from me, or were absent when the paymasters arrived at the respective

posts, or had been previously discharged; and also for pay, subsistence and clothing to Capt. Andrew Brown's company of volunteer artillery, Capt. Babcock's troop of volunteer cavalry, Capt. James Maher's company of volunteers, Capt. Lemen Foot's company of artillery, Capt. Reuben King's company of artillery, Capt. Samuel Drake's company of artillery, Capt. Giles Kellogg's company of volunteer artillery, Capt. Nicholas Emigh's troops of cavalry, &c.....	$23,191.98
Total.....	$569,172.18

Major Samuel Edmonds closed the business of his department of the north about ten days ago, and deposited his rolls and vouchers in my office, but before he could complete his abstract I was under the necessity of dispatching him with $20,000 to pay off the militia and volunteers, who have lately been in service for the protection of Sackett's Harbor, all the other Paymasters being absent on duty. Major Allen with the last advances to him of 71,000 dollars, is closing the business of the 18th detached regiment, commanded by Col. Hugh W. Dobbin — the 19th detached regiment commanded by Lt. Col. Henry Bloom, and the 20th detached regiment commanded by Lt. Col. Peter Allen, and the various uniform independent corps, and other militia, called to the Niagara frontier, during the command of Major General Van Rensselaer, some of whom were taken prisoners at Queenstown and paroled, and most of whom were discharged and dispersed, in the absence of the district paymaster. Paymaster Baldwin is in St. Lawrence county with the last advance of 7,500 dollars to close the payment of militia and volunteers in that quarter; and the paymaster of Col. Mead's detached regiment, is now with

the 8,000 dollars advanced for that purpose, paying off that regiment.

As to the provision for militia who may hereafter be called into service, and to whom will be entrusted the payment of them, I beg leave to observe, that by a law of Congress, passed the 2d day of February now last past, the militia who are hereafter to be called out, are to receive the same monthly pay, rations and forage, and to be furnished with the same camp equipage, as is, or may be provided by law for the army, and of course the duties and supplies of the Quartermaster's department of the militia, hereafter to be called out, will be regulated by, and through the district or division army staff organized and established by the act of Congress passed 3d March, 1813.

In consequence of regulations recently issued from the Adjutant General's department relative to the organization of the militia who may hereafter be called into service, I presume that regimental paymasters of militia and volunteers, will hereafter be assigned and required to give security, to be approved at the Paymaster General's office, for the faithful performance of the trust, in the same manner as Regimental paymasters of the army now do; and that upon such assignment being made, and such security being accepted, the advances for the pay of the militia and volunteers, as well as for the regulars, will thereafter pass directly from the paymaster general, or district paymasters of the army of the United States, to the said regimental paymasters of militia and volunteers.

It is proper however to observe, that all the detached militia of this state, north of the counties of Dutchess and Ulster, have performed a tour of duty, during the last season, and as no act of Congress has been passed, authorizing or requiring a second detachment, no part of the militia north of those counties can be hereafter called upon, unless in case of actual invasion, or imminent danger thereof, according to the act of Congress passed 28th February, 1795,

or according to the militia law of this state; and that I have as yet received no orders or advices in relation to any further call on the militia of any part of the State.

DANIEL D. TOMPKINS."

Albany, March 31, 1813.

April 1. To the Assembly:

"Having already communicated the return of the commissary of military stores to the legislature, I consider the resolution of the honorable assembly, of the 20th instant, after that return was received, as intended to require information as to the instructions, and orders which pursuant to the law in that case made and provided, have been given in relation to the distribution of the arms and military stores. I shall therefore state the general authority and special orders, which have been given by me in relation to that subject, and all the other information required by the resolution, which is at present within my recollection or possession.

IN THE SOUTHERN DISTRICT.

The commissary was directed to obey the orders of the lieutenant-governor, and of any major general of the militia in the southern district, with respect to the issuing of military stores. He was likewise required to ascertain whether the United States had supplied the arsenal at Sagg Harbour, in Suffolk County, with any cannon, muskets or ammunition for the security of the inhabitants of that County, and if they had not, he was directed to remove from New York, to the arsenal at Sagg Harbour for that purpose, the following munitions:

6 Casks of powder
5000 muskets,
1000 flints,
500 cartridge boxes, &c.
10 Boxes of musket cartridges,

1 Box of slow match,
1 Iron nine pound cannon on field carriage, completely equipped
100 cannon balls for nine pounders,
100 do for three pounders.

That property now remains in said arsenal, except fifty muskets and some ammunition which were deposited in the town of Southold, for the satisfaction and security of the inhabitants, upon the bond of several principal and responsible characters, to the people of this state, conditioned for the safe keeping and return of them. The like authority has been given for supplying the town of Huntington with 75 muskets, upon similar terms, but has not yet been exercised.

The first detachment of New York artillery, which was stationed at the state fortifications at the Narrows, was provided with about fifty state muskets. These have been returned, as mentioned in the commissary's report laid before the assembly on the sixteenth instant.

The detachment of uniform corps from the shores of the Hudson, afterwards stationed at that place, were supplied with some muskets and swords from the public store, all of which were regularly returned, excepting a few articles lost in consequence of the upsetting or sinking of a boat, which was conveying a guard from the forts to a British vessel, put under charge of that detachment. The articles so lost are also specified in the commissary's report. Five hundred new muskets of Whitney's manufacture, have within a few weeks been deposited in the New York arsenal, and are to be added to the number mentioned in the commissary's report.

IN THE EASTERN DISTRICT.

Orders were given to the commissary and superintendents of arsenals at Plattsburgh and Elizabethtown, to issue

arms and ammunition upon the requisition of Major General Mooers, the commandant of the third division of the militia of the state, and of the second division of detached militia. Pursuant to that authority, the inhabitants of Franklin county were furnished with some muskets and ammunition upon the solicitation of their committee of safety, for their protection against Indian depredations, and upon the responsibility of respectable inhabitants of that county. In like manner and under the same authority, the inhabitants of Mooers and of other exposed towns and settlements of the northern frontier, were furnished with some muskets and ammunition. Most of the militia also, who were ordered into service on the northern frontier, were equipped with public arms, which have, with very few exceptions, been returned to the arsenals or other depots. The only losses of state property in that district, with which I have been made acquainted, are one nine pound cannon, about 20 stands of arms destroyed in the barracks which were consumed by fire at Champlain in November or December, and the public arms in possession of the company of militia which was captured at French Mills, amounting to fifty or sixty in number, of which the assistant commissary of the eastern district has, by my direction, obtained regular and satisfactory evidence, for the purpose of securing an indemnity therefor from the United States. The nine pound cannon was loaned by Lt. Col. Stephen Thorne, then in actual service, to the commanding officers of the navy, to equip a vessel on Lake Champlain, and a receipt and voucher was taken therefor. The cannon was lost with the boat or vessel upon which it was placed.

Some muskets and ammunition were delivered out upon similar terms to the inhabitants of particular towns of Essex county. Of the precise number now in the arsenal at Elizabethtown, I am unadvised, except by the return of the commissary lately sent to your honorable house. Independent of those mentioned in the commissary's report to be in the Elizabethtown arsenal, and those distributed to the in-

habitants as aforesaid, and besides those which were in the deposit of Malone, a recent return from the commissary of that district, a copy of which marked A. is herewith communicated, will show that there were on the 13th inst. in the Plattsburgh arsenal alone 914 muskets, &c. and only 1630 have ever been forwarded to the arsenals of Essex, Clinton and Franklin.

The removal of the articles specified in the return marked A was directed in consequence of information that the regular troops stationed at Plattsburgh, or a principal part of them were ordered to Sackett's Harbor. Very positive directions were given to the state officers of that district, to attend in person upon the discharge of the militia, to insure the return and surrender of every article of state property which had been issued from the public stores, and to obtain due evidence and certificates from commanding officers of every article lost in the service of the United States, to the end that an indemnity therefor could be obtained from the general government, and I have reason to believe that strict attention has been paid to the execution of those instructions.

Besides the before mentioned issues, several parcels of arms have been delivered upon special orders, to the inhabitants of certain towns of the eastern district, situated near the unsettled and wilderness country which stretches from Lake Champlain to the Black River country. Those inhabitants were extremely apprehensive during the last season of Indian massacres. The arms and ammunition distributed in that district upon such special orders are the following:

For the use of the exempts of the town of Thurman, 50 muskets with equipments, and 1000 musket cartridges have been deposited in that town, the safe keeping and return of which are secured by a bond of the honorable Kitchel Bishop, and Herman Hoffman, Esquire, to the people of this state.

For the use of the inhabitants of the town of Keene, in Essex county, 50 muskets and equipments, and 1000 musket cartridges, secured by a like bond of Archibald McIntyre, Comptroller of this state.

For the use of the inhabitants of Stratford, Montgomery County, 25 muskets, and 1000 cartridges, secured by a similar bond of Joseph Mallet, Thomas Bennett and Silas Philips.

For the use of the inhabitants of Mayfield, in Montgomery county, 25 muskets, secured by the bond of Selah Woodworth, James McKinlay, John McKinlay, Ralph Mack, Duncan M'Laren, G. Sprague, G. Gilbert, William M'Connel, Samuel Gilbert, Daniel M'Laren, Solomon Knapp, A. Wells, G. Woodworth and William G. Woodworth.

For the use of the inhabitants of Lake Pleasant, and Wells, in said county of Montgomery, 35 muskets, and 1000 cartridges, secured by the bond of Isaac Brown, John L. Francisco, William Burke Peck and William Wells.

For the use of the inhabitants of Northampton, in Montgomery county, 40 muskets, and one box of musket cartridges, secured by the bond of John Fay, Alexander St. John, Jacob Shew, Godfrey Shew, James Lobdell, Samuel Maxwell, Joseph Slocum, Joseph Van Arven, William Hammond, Jacob Gibbs, Abraham Van Arnam and Jacob Spier.

IN THE WESTERN DISTRICT.

At the close of the June session of the Legislature, 1000 muskets and a proportionate quantity of ammunition were delivered to the hon. Russel Atwater of the Senate, to be placed in the arsenal at Russel in St. Lawrence county, and to be used and distributed for the defence and security of the inhabitants of that county as might be deemed most conducive to that end by the commanding officer of the troops in service, and the principal characters of the county. Under that discretion, some of those arms have been distributed from the arsenal at the request and upon

the responsibility of respectable inhabitants of different towns and villages of that county, and some remain at the arsenal in Russel. A considerable portion of the militia in service at Ogdensburgh also were equipped with arms from the aforesaid supply, and upon their discharge the arms were stored in the deposit at that place in the charge of the United States officer who succeeded the militia officer in the command of the station. The number of arms so stored and receipted were 532 as appears by the militia quarter master's return, dated 14th January now last past. Besides those arms, two brass six pounders belonging to the state had been forwarded to Ogdensburgh for the use of a company of artillery organized in that village, and 50 stand of arms had been delivered to Capt. Kellogg's company of volunteer artillery for the defence of that place. In October last, when I was at Sackett's Harbour, the commanding officer at Ogdensburgh solicited a reinforcement of artillerists, in consequence of which a detachment was immediately ordered to repair to Ogdensburgh, which was equipped with two brass nine pounders belonging to this state. Whether the whole, or a part only of the last mentioned arms and cannon were captured or destroyed by the enemy in the recent invasion of Ogdensburgh I have not yet been informed. As soon as I was made acquainted with the misfortune at Ogdensburgh, 250 muskets and some ammunition were forwarded and deposited in the arsenal at Russel.

The militia which has been in service at Sackett's Harbour were also supplied with public arms. Previously to their discharge, directions were given to the brigade quartermaster of militia to see to it, that the state property was surrendered when the militia were discharged, and the superintendent of the arsenal at Watertown was notified thereof and required to attend at the Harbour in person to receive the said property and replace it in the arsenal. This duty was performed as will appear by the

invoice, and superintendent's receipt, recently received by me and herewith transmitted, marked B, and by Quartermaster O'Connor's receipt marked C. Independent of the property so returned, three companies of volunteers still in service at Sackett's Harbour are armed with state muskets. Muskets and ammunition have likewise been deposited in the exposed towns of Henderson, Brownville and Champion.

Fifty muskets and cartridge boxes have been delivered from the arsenal to be deposited in Russia, Herkimer county, and a bond was taken therefor executed by Abiather Joy, Amos Reed, Joseph Prindle, William Corey, Gardner Hinckley, John Graves, William Fanning, Josiah Holliday, jun. Jacob I. Stanctift, Edmond Varney, Adam Frink, Nichol Fosdyck, jun. Gershome White, Truman Walker, Raymond Sheldon, and Benjamin Merriman of that town, conditioned for the safe keeping and return of them.

The exempts of Trenton, in Oneida county, were in like manner permitted to take and deposit in that town, 75 muskets, one box of cartridges, for the safe return of which Adam G. Mappa, Pascal C. I. D. Angelis, John Billings, Timothy Powers, Canfield Coe, Hendrick Miller, and David Spencer, of that town, are responsible.

The commanding officer of militia at Oswego, was authorized by me, and did deliver for the protection of the exposed town of Sterling, situate on the shore of Lake Ontario, 50 muskets and accoutrements, and took therefor, the bond of George Cooper, Joseph Divine, and Jacob Willsee, responsible inhabitants of that town.

The superintendent of the arsenal at Rome, upon good security, and with the like authority, permitted Major Parkhurst, who commands the militia in Mexico and other towns on the shore of Lake Ontario, between Sackett's Harbour and Oswego, to deposit there some arms and ammunition; and upon my own order, some arms and am-

munition were deposited in Martinsburgh in the care, and upon the responsibility of Brigadier General Walter Martin, and two hundred muskets and some ammunition were also deposited in Turin, Leyden, and Lowville, upon the bond of Richard Coxe, Daniel Kelley, James H. Leonard, Jesse Wilcox, Levi Hart and Levi Collins.

Upon the declaration of war, the inhabitants of Steuben and Allegany counties were desirous of being prepared to meet any injury or attack which might possibly be made by the Indians, and to enable them so to do, the hon. Henry A. Townsend of Steuben, received from the arsenal in this city, 250 muskets, 240 cartridge boxes and 10 boxes of musket cartridges which have been deposited as specified in his communication hereunto annexed, marked D, and are in good order.

All issues from the Canandaigua and Batavia arsenals have been made upon the requisition of the militia generals, who have been in service on the Niagara frontier, with whose instructions and orders in relation to the distribution of arms and ammunition, the superintendents of those arsenals were directed to comply. Pursuant to that authority, I understand that the town of Wolcott, the inhabitants of Pultneyville, the inhabitants of Chautauqua and of other frontier settlements, were accommodated with arms, upon good and sufficient security. Col. Swift's regiment of volunteers which repaired to Niagara, for the protection of that frontier antecedently to the war, was equipped with state arms. That regiment is still in service on the Niagara frontier. Many of the detached militia, who were in service upon that frontier, were likewise provided with arms from the state arsenals. Some of the arms so supplied must have been in the hands of the militia, who were killed or made prisoners at Queenstown, and it is very probable some were lost by accident and negligence, and that some were embezzled by deserters and others. What part of the public property has been so

lost, and what part thereof belonged to the United States, and what part to this state has not yet been reported to me.

But Major Frederick Miller, an enterprising, upright and valuable officer residing near Buffalo, has been for several months employed in collecting and returning the articles belonging to the state, which had been delivered out from the two most westerly arsenals.

The recent returns of the superintendents of arsenals and of the assistant commissaries of military stores, except what are herewith communicated, have been delivered to the commissary to be incorporated in his next report or return, which will be due by the first of July next.

I have therefore, been obliged to rely upon memory and upon verbal representations, for some of the facts herein stated.

I indulge a hope, however, that taken in connection with the commissary's report, this message and the documents accompanying it, will afford satisfactory information to the assembly, upon the matters contained in their resolution of the 20th instant, so far at least as it can be expected to be derived from me without a further return of the commissary; to whose department it appertains to furnish such information. It is however unpracticable to obtain a second return from the commissary during the present session of the legislature.

I beg leave to request a return of such of the papers and documents herewith sent to the honorable assembly, as they may not judge necessary to be filed or put upon their minutes.

DANIEL D. TOMPKINS."

April 1, 1813.

April 5. To the Senate:

Objections by the Council of Revision to a bill "relative to the eastern branch of the Schoharie turnpike road."

"Because, by the 4th section of the bill, the president and directors are authorized to assess upon each share of the capital stock of said company, a tax not exceeding one dollar and fifty cents, without the consent of the stockholders, and annexes the penalty of forfeiture of the stock, for non-payment of such assessment, thereby imposing upon the stockholders, against their will, the payment of money not authorized by the original act of incorporation, and in violation of the rights created under such act, without any adequate public necessity appearing to justify the same."

The bill was not passed over the veto.

April 6. To the Assembly:

"GENTLEMEN.—The communication which accompanies this message, has just been received from the Secretary of the war department. The propriety of making legislative provision, for the execution of writs *ad quod damnum* by foreign juries, in certain cases, as recommended by me in two former communications, will be increased by the suggestion of the Secretary, that the general government may be compelled to abandon the erection of a work, deemed highly important for the defence of the city and port of New York, for the want of provision by the Legislature of this state, to enable them to procure the title to the requisite site for a fort to protect the battery erecting on Hendrick's reef. [See note 5.]

DANIEL D. TOMPKINS."

April 6, 1813.

The following is the letter from the Secretary of War:

WAR DEPARTMENT, *March*, 1813.

SIR.—I had the honor of receiving your letter of the 20th inst. recommending to the U. S. the purchase of the whole

farm of Denise's at his own price, viz: 19,000 dollars. My authority will not extend to a purchase of more land than will be wanted for a covering work to that proposed to be raised on Hendrick's reef. Various attempts have been made to obtain such quantity of this farm at a reasonable price, but without effect. My last hope was placed in the interposition of the Legislature, and Major Bumford had my instructions to bring the subject before it, either by direct application, or through the ministry of your Excellency. From him I have hitherto received no report, either of his own producing, or of those of the Legislature —but it cannot but be obvious to you, that if this body rise without interposing its authority in the way requested, it can only be because they set a less value upon the fortification on the Long Island side of the Narrows, than the national government had expected, and that under this impression, it will become the duty of the latter to suspend their labors at that point. I beg your Excellency to accept the assurance of my very great respect.

JOHN ARMSTRONG."

April 6. To the Assembly:

"GENTLEMEN.—It will be seen by the enclosed communication from the commissioners of fortifications, that they are uncertain about the propriety of proceeding in the redoubt or protecting work on Signal Hill, at the Narrows, with the balance of funds in their hands, which, in their opinion, is inadequate to complete such work. I therefore submit their communication to the consideration of the Legislature.[11]

DANIEL D. TOMPKINS."

April 6, 1813.

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[11] Chap. 203, appropriated $22,000 for the purpose of erecting a redoubt on Signal Hill, at the Narrows.

April 7. To the Senate:

Objections by the Council of Revision to a bill "concerning joint tenants, and tenants in tail, regulating descents, and abolishing entails."

"Because the bill is a transcript of a law, passed the 23d of February, 1786, and is to be found in the first volume of the laws, page 44. That law has long been revered for the utility and the wisdom of its provisions. It is the Magna Charta of most of our estates by inheritance. It was left untouched in the revision of 1801, and to re-enact it now, appears not only useless but inconsistent with the ends of legislation; for, by the first section of the bill, there is a very formal abolition of estates in tail, which would imply that such estates still existed, when it is well known that they are already abolished, and have ceased to exist ever since the year 1786. The last section in the bill, shows in a strong point of light, the impropriety of re-enacting that law; for the last section in the law of 1786, was confined to certain special cases of descents and conveyances, happening between the years 1782 and 1786, and the present bill makes the same provision for those obsolete cases, as if they were transactions of yesterday.

The only reason that appears, for re-enacting the law of 1786, was to incorporate into it the provisions in the 6th and 7th sections in this bill. But those provisions being of a local and temporary nature, were not necessary to have been re-enacted, and especially to be attached to a law intended to establish permanently, and as we trust, for ages to come, the title to real property by descent. Those provisions relate only to rights in the Military tract, of certain soldiers, who died before the 27th of March, 1783. The cases there alluded to, are becoming obsolete by time, and the statute of limitations. The necessity of that provision was temporary, and will soon be forgotten; whereas, the law of descent is so vast, and so constant in

its operation, that it ought not to be disturbed for any light or transient cause."

The bill was not passed over the veto.

April 8. To the Senate:

Objections by the Council of Revision to a bill "restraining bigamy."

"Because the provision which subjects the person who shall marry the husband, or wife, of any other person, knowing at the same time, that such husband, or wife, is living, to the penalties of felony, may, upon a literal construction, expose an innocent person to punishment, and the general rule is, that penal laws are not to be extended by equity.

2d. Because, though the offence, probably intended to be provided against, by the last clause in the said bill, is of a milder type, as to its influence on society, than simple adultery; inasmuch, as though equally immoral, it is accompanied with an acknowledged respect for the common decencies of life, and destitute of every pretence of deception, relating to the former marriage; it is made punishable as a felony, whilst common adultery can only be redressed by civil suit."*

The bill was not passed over the veto.

April 9. On the 27th of February, the Senate adopted the following concurrent resolution, which was concurred in by the Assembly on the first of March:

"*Resolved unanimously,* That the gallantry and skill of Captain Hull, in attacking and destroying the British frigate Guerriere; of Captain Jones, in attacking and capturing the sloop of war the Frolic, a ship of decidedly superior force; of Commodore Decatur, in attacking and capturing the frigate Macedonian, and of Commodore Bainbridge, in attacking and destroying the frigate Java,

* Adultery was made a crime by L. 1907, chap. 583.

are events of such noble and splendid achievements, and happening in such rapid succession, as to demand from the representatives of the people of this State, a public expression of the high sense in which they are held; that the thanks of this Legislature be presented to Captains Hull and Jones, and to Commodores Decatur and Bainbridge, their officers and crews, for their cool and intrepid valor in the capture of the above mentioned British ships, and for thus bravely supporting the honor of the American flag, and valiantly avenging the violated rights of their country on the ocean."

On the 9th of April, the Governor transmitted to the legislature copies of the following communications relative to that part of the resolution applicable to Commodore Bainbridge:

ALBANY, *March* 6, 1813.

SIR.—I have the honor to present to you resolutions of the honorable the Senate and Assembly, of the state of New York, containing their unanimous vote of thanks for the skill and valor displayed by yourself and the officers and crew of the Constitution, in the capture of the British frigate Java, and for bravely supporting the honor of the American flag, and valiantly avenging the violated rights of our country on the ocean.

With that of the other departments of the government, I beg leave to unite an expression of my deep sense of the conduct displayed in the capture of the Java, and of my high estimation of the distinguished gallantry of those heroes who achieved that brilliant victory.

I have the honor to be,
With the greatest respect,
Your obedient servant,
DANIEL D. TOMPKINS.

Commodore WM. BAINBRIDGE.

U. S. FRIGATE CONSTITUTION, 30*th March*, 1813.

SIR.—I have the honor to acknowledge the receipt of your letter of the 6th inst, enclosing resolutions of the

honorable the Senate and Assembly, of the state of New York, containing their unanimous vote of thanks, to myself, officers and crew, of the frigate Constitution, for attacking and destroying the British frigate Java. Permit me, sir, through the same channel, to convey to those highly respectable legislative bodies, of the state of New York, my most grateful acknowledgments for the honor they have conferred on us; and to assure them, that when we are again required to fulfill our duty, in opposing the enemy, we shall be animated by the remembrance of the honors our country has already liberally bestowed on us. The most grateful, as well as the greatest honor, that an American officer can receive, is, the approbation and applause of his countrymen.

For the friendly manner, sir, in which you have been pleased to communicate the resolutions of the vote of thanks, I beg you to accept my best wishes for your health and happiness, and believe me to be, with sentiments of great respect,

Your obedient servant,
WM. BAINBRIDGE.

His Excellency DANIEL D. TOMPKINS,
Governor of the State of New York.

April 9. To the Assembly:

Objections by the Council of Revision to a bill "to revive and amend an act entitled 'An act to incorporate the Haerlem Bridge Company, and for building another bridge across the Haerlem River.'"

"1. Because it is not recited, nor does it otherwise appear that the corporation established by the act, entitled 'an act to incorporate the Haerlem Bridge company,' passed March 25, 1808, have applied under their common seal, for the alterations of their charter contained in this bill, although the rights and privileges of that company are materially changed and affected thereby.

2. Because the bill expressly prohibits the keeping of any ferry or the building of any bridge across Haerlem River, from the county of New York to the county of Westchester, within three miles of either side of the present Haerlem bridge, and because the granting of an exclusive privilege to control the whole or principal part of the intercourse between York Island and the main land across the navigable waters of Haerlem creek, without limitation as to time, and by a bill so unprovisory in essential points as the present, is dangerous in its tendency, and may, and probably will be extremely detrimental to the public good at some future period.

3. Because, by the charter of the city of New York, and the laws confirming and altering the same, the jurisdiction of the corporation of the said city extends to low water mark on the Westchester side of Haerlem river, and by the same charter and laws the right of granting and regulating ferries and bridges over the navigable waters within the precincts of the said corporation, is granted to the mayor, aldermen and commonalty of the city of New York. The privilege granted by this bill infringes the charter rights of the said corporation of the city of New York, granted and secured to them as aforesaid."

The bill was not passed over the veto.

April 12. To the Senate:

Objections by the Council of Revision to a bill "limiting the period of bringing claims and prosecutions against forfeited estates."

"1. Because the bill appears to have been intended to be a revised bill, and as re-enacting the statute of the 28th March, 1797, to be found in the first volume of the laws, page 162, whereas that law had never been altered or amended, and was not within the purview of the general revision of the laws, and being a permanent statute, affect-

ing a very extensive portion of real estate, it is at least useless, and may be injurious to the stability of those rights to repeal and re-enact it.

2. Because the case of dower of the widow of the person attainted or convicted was not within the provision of the former act, since according to the judicial construction of that act, as settled by the judgment of the supreme court,* it did not apply to the right or claim of dower in such case; and so long as that decision remains in force and unreversed, it might be taken to be the true and just construction; and although it rests in the wisdom of the legislature to limit the right of action in cases of dower, as well as in other cases, to five years, yet every new limitation should be prospective, and not commence before the passing of the act; for otherwise parties might be affected by such limitation without notice of it, and might lose their rights, even while they were sleeping in security under existing laws."

The bill was not passed over the veto.

April 13. The Legislature adjourned without day.

1814. JANUARY. LEGISLATURE, THIRTY-SEVENTH SESSION.

DANIEL D. TOMPKINS, Governor.

The Legislature met on the 25th of January, when the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—It would have given me great satisfaction to have had it in my power to congratulate you on this occasion upon the return

* See Hogle v. Stewart (1811), 8 Johns. 104.

of the advantages and blessings of peace. The government of the United States, both before and since the commencement of the present war with Great Britain, has uniformly evinced a disposition to adjust, upon liberal and reciprocal terms, the existing differences between the two nations. The appointment of envoys plenipotentiary, who repaired to Europe so early as May last, upon the proffered mediation of the Emperor of Russia, furnishes an incontestible proof of that disposition. It does not appear that a spirit equally conciliatory has influenced the councils of the enemy. The good offices of the Emperor have been declined, and a proposition has been submitted to our government by the Prince Regent for transferring the theatre of negotiation to London or Gottenburgh. The president has given further evidence of his desire to terminate the calamities of war by acceding to that overture also. It is to be hoped that the contemplated negotiation may result in the conclusion of an honorable and lasting peace. But when we consider that pacific conferences are greatly procrastinated by the proposed change of the place of treating; when we reflect upon the non-acceptance by the Prince Regent of the mediation of his illustrious friend and ally; upon the former inadmissible pretensions of the British government and upon the terms of Lord Castlereagh's recent communication to the secretary of state, our hope of a favorable issue ought not to be sanguine. If the late proposition has proceeded from a willingness to restore amity upon principles which may be mutual and consistent with the established maxims of public law, the impending conferences will very probably eventuate propitiously. But we ought not to permit the hope of that result to lull us into a fatal security; for it may be that we must ultimately depend upon an unanimous, vigorous and successful prosecution of the unavoidable contest, in which we are involved, for the establishment and security of our just rights.

It was not to be expected after so long a period of peace,

that upon the first declaration of a war by the United States, a well organized and efficient army could immediately be brought into the field. There was little of the experience of the revolution remaining in the country, and to develop military talents and national resources and to give them the most wise and beneficial direction is the work of time. In tracing the progress of our arms in the late campaign, however, there is as much cause of pride and congratulation as it was reasonable to hope for.

The navy has maintained, if not brightened, the luster of its antecedent character. Arduous battles and brilliant victories, surpassed by none recorded in the annals of history, and which have given splendor to the American name, have been fought and won by it.

The capture of York, the taking of Fort George, the conquest of Proctor's army, the subjugation of the western Indians, the successive victories over the Creeks, the defence of Sandusky, of Sackett's Harbor, and of other places, were honorable to our arms and have exhibited traits of conduct and intrepidity in the army that justify high expectations. These gratifying events, it is true, have been followed by some disappointments and disasters.

Public expectation was highly excited by the last movement of the main army and was greatly disappointed at the failure of the supposed object of that movement.

The recent invasion by the enemy of the western frontier of this state, and the extraordinary surrender to him of the garrison and fort of Niagara, the burning of flourishing villages and settlements; the pillage of private property, and the massacre of peaceable inhabitants of that frontier by a savage foe, are melancholy occurrences, calculated to excite the liveliest sympathy for the sufferers, and to arouse the indignation of every friend of humanity and of his country. The conduct of the enemy during that invasion was marked by a disregard of the rules of civilized warfare, and by a malignant ferocity. Many of our

fellow citizens, who were at peace with their families, were murdered and scalped. The bodies of many of those who were wounded or taken prisoners in the engagement at Black Rock, have been found mangled in the most shocking manner by the tomahawk and scalping knife.

The distresses of the families who have thus become the victims of a cruel and unprecedented warfare call for the immediate and liberal interposition of the legislature.[1] The character and dignity of the state, as well as justice to our exposed and suffering fellow-citizens, demand the exertion of its utmost power and resources to punish the atrocities of the enemy, and to render that frontier secure in future from his incursions and cruelties.

The measures which were taken upon that emergency, with the requisitions, correspondence, orders and reports relating thereto, will be specially communicated without delay.

You will permit me, gentlemen, to remark in this place, that the want of some legal provision whereby the burthen of defence may be more equitably diffused, and the less wealthy part of the community be relieved from the disproportionate share of actual service to which they are subjected by the existing laws, the want of legal power for enforcing summarily obedience to the authority delegated to officers by the militia law, and to supply food, quarters and transportation for troops, called out under state authority, render it impossible for the militia generals to repel invasions immediately and effectually.

I must likewise be indulged in again soliciting the attention of the legislature to the propriety of raising corps of volunteers, of giving them suitable remuneration for their

[1] The Legislature acted promptly on the Governor's suggestion, and on the 18th of February, passed a law, chap. 16, appropriating $50,000 for the relief of the sufferers by the late invasion in the counties of Genesee and Niagara, also including Tuscarora Indians and Canadian refugees. Graham Newell, William Wadsworth, and Joseph Ellicott were appointed commissioners to distribute the appropriation.

clothing and an increase of pay. These corps might take the field upon any emergency, without the tedious process of detaching, assembling and organizing men from remote districts, and would perform any actual service which might legally be required more usefully than detached militia.

By an act of congress passed in June [August] last, a direct tax was laid upon the United States, and in the apportionment, the sum of four hundred and thirty thousand one hundred and forty-one dollars and sixty-two cents, has been imposed upon the state of New York. The same law distributes the quota of each state to the several counties thereof, but authorizes the state legislatures previously to the first day of April next, to vary the apportionment, and entitles each state to a deduction of fifteen per cent, upon paying its quota into the treasury of the United States, before the tenth day of February next, and of ten per cent. if paid before the first day of May next. The limitation of time to have the benefit of deduction of fifteen per cent. is extended by a late supplementary law to the 20th day of February. The advantages which will accrue to our citizens, and of course to the state, by the payment of this quota directly from its treasury, are too obvious to be enumerated. The saving to the citizens of the state of about sixty-five thousand dollars, and to the nation of the expense of assessment and collection, will amount to nearly one hundred and thirty thousand dollars. The number of inhabitants and the amount of wealth of the respective counties of this state, vary essentially from year to year; so that it is scarcely possible, at any one time, to make a perfectly equitable distribution of a tax amongst them. A considerable part of our unsettled lands are owned by non-residents. The inconveniences and sacrifices of the inhabitants of some counties, arising from their exposure to the enemy, and from the frequent calls which have unavoidably been made upon them to perform actual militia duty,

have been such that it would at this particular juncture, be unreasonable and severe to levy upon them any part of the direct tax.

The state can advance the present tax without any material embarrassment of its treasury or call upon its citizens.[2]

In the year one thousand eight hundred and eight, a loan at seven per cent. was made by the state to its citizens, for their accommodation and relief, under the then restrictive laws. The privilege of borrowing from divers banks, at five and six per cent. interest, is reserved to the state in

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[2] No provision for the payment of the direct tax was made at this session. The Assembly committee, to which was referred this part of the Governor's speech, gave the subject serious consideration and presented a long report stating various reasons why the State should not at that time assume the direct tax imposed by the Federal government. It was pointed out that there was only a small balance in the State Treasury, and that the Federal tax could not be paid without a sale of public lands, which was deemed inexpedient, or the disposition of State funds which had been accumulated for specific purposes, or by borrowing the money, and that the interest on the money to be borrowed would far exceed the discount offered by Congress on the prompt payment of the tax. It was also pointed out that besides the Federal tax on lands, houses, and slaves, Congress had also "laid other taxes on sundry articles of personal property, such as carriages, licenses, stills, stamped paper, and duties on goods sold at auction. These taxes have all gone into operation, and many of them have been collected, and are to be paid to the United States, no right having been reserved to the States to pay those taxes. If a State tax should be levied it must, under our existing law, be levied on both real and personal property, and in this way the personal property would be twice taxed." The committee recited large expenditures by the State in the progress of the war which should have been or should be borne by the United States, and the report closed with the statement that "judging of the future by the past, your committee beg leave to express their firm conviction that instead of wasting the resources of the State by granting them to the general government, it is the solemn and imperious duty of the Legislature to seek the reimbursement of the expenses already incurred by this state on account of the war."

The act of August, 1813, referred to in the Governor's speech, imposed a direct tax of $3,000,000 on the several States. This was followed by another act, which became a law on the 9th of January, 1815, which provided for an annual direct tax of $6,000,000, New York's share being $860,283.24. The Legislature of 1815, by chap. 111, accepted the latter act, and provided for the payment of the direct tax thereby imposed on the State.

the acts giving or extending their several charters. It is, therefore, in our power to borrow, at a moderate interest, the amount of the direct tax before mentioned, to advance it for the benefit and accommodation of our citizens, and to appropriate and pledge for its repayment the securities taken for former loans by the state. The importance of this subject to our constituents and to the interests of this state and of the nation, will, I trust, recommend it to your early and serious attention.

Soon after the last adjournment of the legislature, two persons were convicted in this city of the crime of murder; the one as principal in the first degree, and the other as being present, aiding and assisting in the commission of the crime. I judged it to be my duty to suspend the execution of one of them [Joseph Moser]. The report and documents upon which the respite was founded are now presented to you.[3]

GENTLEMEN.— The progress and success of domestic manufactures and improvements of every kind; the high price obtained by the husbandman for the products of his labor, and the general health, prosperity and tranquillity (except in the lamented instances already noticed) which has prevailed within our state during the last year, call upon us to render fervent gratitude to that indulgent Providence, who has mingled so many of the enjoyments and benefits of peace with the afflictions of war. Let us therefore implore Him to continue His benedictions upon our beloved country, and to grant us unanimity, patriotism and wisdom to pursue, at this important session, the most essential interests of this state and of the union.

DANIEL D. TOMPKINS.

Albany, January 25, 1814.

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[3] Joseph Moser was pardoned by an act, chap. 109, passed April 9, 1814. According to the record Thomas Burns, the principal, was executed for the crime.

SPECIAL MESSAGES.

February 1. To the Assembly:

"GENTLEMEN.—Pursuant to the suggestion made in my public communication at the opening of the session, I now lay before you a statement of the proceedings which have taken place relative to the invasion and defence of the Niagara frontier.

On the 26th day of November last, I received a requisition from the War Department, a copy whereof marked (A) accompanies this message. On the same day a general order for levying the detachment issued (B), with a blank for the number of men. This order was enclosed to General M'Clure, then commanding on that frontier, with authority and directions to fill the blank with such number of men as would be competent, according to the authentic information he might possess of the number, situation, and objects of the enemy's force in that direction, and thereupon to transmit the order to Major General Hall.

Upon my return to this place from the southern frontier, on the 24th December last, an express delivered me communications from General M'Clure, and from General Hopkins, commandant of the Niagara brigade of militia, informing me, that the enemy had crossed at Lewiston and burnt that village, and of their apprehensions for the safety of Fort Niagara. That the militia had been called forth *en masse,* and that about 400 of them had arrived.

The express stated, that he met bodies of troops going out, and that Major General Hall, commandant of the western division of militia was on his way to that frontier.

The superintendent of the United States Ordnance Department in this city, immediately sent off 350,000 musket cartridges, 14,000 flints, 500 muskets and a quantity of ammunition prepared for field pieces. There was also furnished from the state supply, at this place, 1000 muskets, and cartridge boxes, which have since been followed by 300 camp kettles, and as many axes and shovels as could

be procured, and by a quantity of musket cartridges belonging to the state, which was near Oswego.

Not having the means of immediate transportation at my command, the quarter master general of the United States for this district, upon a requisition therefor, caused the state muskets and cartridge boxes to be transported with those of the United States.

A copy of my answer to General M'Clure's letter, (C) and also of a communication made to General Hall, (D) is annexed.

On the thirty-first day of December, a dispatch from General Hall (E) came to hand, which gave me reason to hope, that farther depredations of the enemy would be prevented. But on the second of January, instant, an express brought a second despatch, (F) giving the melancholy account of the destruction of Buffalo. Whereupon, Colonel Lamb, one of my aids-de-camp, was directed to repair immediately to that frontier, with instructions to confer with General Hall and the other general officers of militia, and with plenary powers to comply with any request within the scope of my authority, and the resources of the state. By him also, a remittance of some funds was made to Major General Hall, and at the same time, the general was invested with full and entire command over all the militia and means of defence west of Onondaga, for the purpose of resisting the invasion. On his arrival at Onondaga, Col. Lamb informed me, that the enemy, except the garrison of Fort Niagara, had returned into Canada. On his arrival at Batavia, he confirmed that information, and stated further, that the people who had fled from their homes were returning to them, and that nothing more could be done by militia on that frontier, at present, than to support and protect the inhabitants against further encroachments. A copy of his final report is herewith submitted. (H)

The paper marked (I) contains Major General Hall's official account of his arrangements, and of the battle with

the enemy at Black Rock on the 30th of December last. Three reports have since been received from him. (K, L, O) The copy of an affidavit of Robert Lee, Esquire, who was taken a prisoner in Fort Niagara, (M) also accompanies this message.

The preceding statement, communications and documents, furnish all the information in my possession relative to the late invasion, and will acquaint the Legislature with all the measures which have been adopted in consequence of it. It will, I trust, satisfactorily appear from them, that the exertion of all the resources of the state, applicable to the protection of the western district, were promptly exerted in its defence.

It must be ascribed to a great waste or embezzlement of public property on that frontier, that there should have been any deficiency of arms or ammunition for repelling the late invasion; for a number of cannon and a great proportion of all the arms, ammunition and other military stores of every kind, belonging to the state, had been before, forwarded to the arsenals at Canandaigua, and Batavia, and to Buffalo, and to other places west of Canandaigua, and large quantities thereof had been deposited for the security of the inhabitants in the towns bounded by Lake Ontario and Lake Erie, and in other places. The whole of the public stores at Canandaigua and westward of it, from the beginning of the war, have been subject to the orders of Major General Hall, and of every other general officer of militia who might be called into service to repel invasions. A message communicated to the Legislature last year, with respect to the distribution of arms and military stores, and the annual report of the commissary of the state will afford more particular information upon the subject.

I fully concur in the suggestion made by Colonel Lamb in his report, which has been likewise mentioned by most of the militia officers of the West, that a description of

force more permanent and more to be relied upon than detached militia is indispensable.

I therefore beg leave to recommend the organization of two regiments of volunteers, of 1000 men each, and a battalion of mounted infantry or riflemen, consisting of 400 men who may repair to that frontier — relieve the detached militia now there, and remain in service for the time for which the former are bound to serve — that the wages of privates be increased by the state to ten dollars per month — and that the volunteers be permitted to choose their own officers. Should the Legislature think with me on the above subject, there will be no difficulty in procuring a sufficient number of volunteers immediately. There are equipments belonging to the state of every kind, west of Canandaigua, sufficient for twice the number of volunteers before mentioned.

Any other plans or arrangements which the wisdom of the Legislature may devise for the emergency, will equally meet my cordial co-operation and support. Many of the brave men who fell at Black Rock, were in the service of the state pursuant to the laws thereof. The laws of the United States may not extend to their families. Those also who were wounded or disabled may not come within the purview of the pension law of the United States. The exercise of further legislative authority will, therefore, be requisite, before the wounded can receive the benefit of the provision contained in the 70th section of the act organizing the militia of this state. Although that section does not extend to the families of those who fall in the service of the state, yet they have claims upon its protection and bounty which the Legislature will readily discharge.

DANIEL D. TOMPKINS."

January 31st, 1814.

The Assembly journal contains the papers referred to in the message.

February 3. To the Senate: Transmitting a resolution adopted by the Legislature of Tennessee recommending an amendment to the federal constitution, reducing the official term of senators from six years to four years.[4]

February 12 and 14. Thanking the Senate and Assembly respectively for their addresses.

February 16. To the Senate:

"GENTLEMEN.—I have the honor to present to the Senate the report of the commissioners of the road mentioned in the act, entitled 'an act, to amend an act, entitled 'an act for the opening a road between the city of Albany and the River St. Lawrence,' passed April 9, 1813.'[5]

DANIEL D. TOMPKINS."

Albany, February 16, 1814.

February 16. To the Assembly: Transmitting an annual return of the commissary of military stores, and of the Inspector General of Staves and Heading.

February 25. To the Senate: Transmitting the report of the Governors of the New York Hospital.

March 4. To the Senate:

"GENTLEMEN.—By the 70th section of the militia law of this state, it is enacted, that in case of invasion, commandants of divisions, brigades and regiments, may order out their respective corps to repel such invasion; and that the militia so called out shall receive the same pay as the troops of the United States. But there is no appropriation applicable to that object, nor is there any pay department organized for receiving the money appropriated, and paying the militia so called into the service of the state.

[4] The Senate adopted a concurrent resolution approving the Tennessee proposition relative to the official term of United States senators, but the Assembly declined to concur.

[5] Another act, chap. 33, relative to the Albany and St. Lawrence road was passed March 11.

During the last year brigadier general Pierre Van Cortlandt, junior, ordered out a part of the Westchester brigade, when the ships of the enemy came down the sound to the shores of that county. Major General Mooers, in like manner, called out a portion of the militia of his division upon two occasions, to resist actual or apprehended attacks on Plattsburgh. Brigadier General Burnett has, during the last year, made calls upon the militia of his brigade, for the defence of the villages and property on the shore of Lake Ontario. Brigadier General Hopkins, of Niagara, called forth the militia to repel invasion at Black Rock; and Major General Hall, on the late emergency on the Niagara frontier, made a call for 1,900 men, under the authority conferred by the statute of this state; about 1,200 of which are still in service, under his command. An extract of a letter lately received from him is enclosed.

I therefore beg leave to recommend the subject to the immediate attention of the legislature. It will be necessary to make provision in the following particulars:

1st. The organization of a paymaster's department of militia.

2nd. A direction that the paymasters give bonds to be approved by some proper officer, and upon what vouchers they shall be authorized to pay.

3d. An appropriation to provide for the payment of militia already in the service of the state, and of those hereafter to be called out, and for the contingent expenses of such militia.

It is proper for me to observe, that in all the cases before mentioned, the proceedings of the generals were necessary and proper, and I have therefore approved and confirmed them.

DANIEL D. TOMPKINS."

March 5. To the Assembly: Transmitting the annual report of the inspector of flour and meal in the city of New York.

March 24. To the Assembly:

"GENTLEMEN.—The report of the Commissioners of Fortifications is herewith communicated. The recommendation of the commissioners for a further appropriation of 50,000 dollars, will, I hope, meet the approbation of the Legislature. Although they contemplate the expenditure of the proposed appropriation, in erecting a permanent protecting work at the Narrows; yet I would respectfully suggest the propriety of giving sufficient latitude of discretion for its application to any other object of defence which, in consequence of emergencies, may be found to contribute more immediately and effectually to the security of the city and harbor of New York.

Whilst I am upon the subject of defence, I must be permitted to renew the recommendations contained in a confidential communication, addressed to the honorable Assembly, on the 15th day of March, 1813. Independent of the articles there proposed, I would suggest the propriety of providing for the commissary's department the ensuing year, by authorizing the procurement of an additional supply of the following military stores, viz:

2,000 muskets with equipments;
500 rifles with do
1,000 quarter casks powder;
500 spades and shovels, with a proportionate complement of axes, crowbars, pick axes, bill hooks and other tools.
10 Field pieces, to be mounted and equipped with caissons, &c. for the Horse Artillery in the Southern District.
30 Rounds of prepared ammunition for every cannon and field piece belonging to the state, in the city and harbor of New York.

The compensation of the Commissary, Assistant Commissaries and Deputy Commissaries, is not, in my opinion, adequate to the duties which they ought respectively to

perform, during the continuance of war, and I therefore respectfully recommend an increase of their compensation.[6]

DANIEL D. TOMPKINS."

March 24, 1814.

March 24. To the Assembly:

"GENTLEMEN.—By a resolution of the Legislature of the 8th day of April last, I was requested to require of the Government of the United States, the delivery of as many stands of arms as this state might be entitled to receive by virtue of the act of Congress making provision for arming and equipping the whole body of the militia of the United States, passed April 23d, 1808.

On the 8th of July last, an order was issued from the War Department, for the delivery of two thousand muskets to the use of this state, which were accordingly received by the Commissary. One thousand were deposited in the Albany Arsenal, and the residue in the Arsenal at New York.

DANIEL D. TOMPKINS."

March 24, 1814.

April 4. To the Assembly: Transmitting the annual return of the militia.

April 8. On the 3d of February, the Senate adopted the following resolutions:

"The Senate of the state of New York feeling a deep interest in the welfare of our beloved country, desirous that its rights may be asserted, and its honor maintained, anxious for its prosperity and glory and grateful to all, whose exertions have promoted these objects, resolve as follows:

Resolved unanimously, That the Senate view with the highest satisfaction, pleasure and pride, the victory

[6] The appropriation act, chap. 200, made provision for additional compensation of the officers of the commissary department.

obtained by the navy of the United States, on Lake Erie, under the command of Commodore Oliver H. Perry, over the navy of Great Britain, on that lake, on the 10th day of September last, a victory as glorious, by the lustre which it reflects on the nation, as by the important advantages which it secures to her cause.

Resolved unanimously, That the Senate entertains the highest sense of the valor, skill and conduct, of Commodore Perry, in his arduous engagement with the British fleet, and hereby declares to the world, the profound gratitude which it feels to him for this great achievement; which, while it has exalted his country, has covered his own name with immortal glory.

Resolved, That the Governor of this state be requested to communicate these resolutions to Commodore Perry."

Thereupon the Governor, on the 5th of February, sent Commodore Perry the following letter:

ALBANY, *February 5th,* 1814.

SIR.—I have the honor to present to you resolutions of the Senate of the State of New York, expressive of their high sense of the valor, skill and conduct, displayed on the 10th day of September last, in the victory obtained by the navy of Lake Erie, under your command, over that of Great Britain, and of their profound gratitude for that great achievement.

Permit me, at the same time, to say, that my own estimation of the conduct exhibited on the memorable 10th of September, harmonizes with that of the Senate, and to declare my own feelings of gratitude to yourself and to the heroic officers and men who fought with you on that signal occasion,

With great consideration and esteem,

I am, Sir,

Your obedient servant,

DANIEL D. TOMPKINS.

Commodore OLIVER H. PERRY.

The following is Commodore Perry's reply:

NEWPORT, *March 28th*, 1814.

SIR.—I have the honor to acknowledge the receipt of your letter, covering resolutions of the Senate of the State of New York, in relation to the action of the 10th September, 1813, on Lake Erie. It is a source of great pleasure to me that my exertions in the cause of my country should be viewed in a favorable light by so respectable a body as the Senate of the state of New York. I feel highly gratified also in your testimony in favor of my brave officers and men.

I have the honor to be, Sir,
Your obedient humble servant,
O. H. PERRY.

His Excellency DANIEL D. TOMPKINS.

April 15. The Legislature adjourned without day.

1814. SEPTEMBER. LEGISLATURE, THIRTY-EIGHTH SESSION.

DANIEL D. TOMPKINS, Governor.

FIRST MEETING.

The Legislature met September 26 pursuant to the Governor's proclamation. The next day the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—The extreme pressure of public business, and the peculiar emergencies of the war in which we are engaged, induced me to call this session of the legislature. At the close of the last session, a confident expectation prevailed, that ex-

isting hostilities would soon be terminated by a fair and honorable peace. Great Britain, it is true, had declined the proffered mediation of the Emperor of Russia; yet, as far as professions could be relied on, she was still disposed to restore amicable relations between the two countries upon satisfactory and mutual terms. Subsequent events, however, have shown that such hopes were fallacious. Whether originally insincere in his professions, or flushed by the recent events in Europe, and the vast disposable forces they have left at his command, the enemy has certainly assumed a tone of arrogance and a spirit of increased hostility incompatible with feelings of reconciliation. The most palpable delays and evasions have been practiced to defer a meeting of negotiators, while in the meantime large armaments have been dispatched to our coast, and powerful armies collected on our frontiers, in the presumptuous hope of overwhelming us in a single campaign. A predatory and wanton warfare, destitute of all generous principle, and disgraced by pillage and conflagration, has been carried on in our bays and rivers; and the enemy has openly avowed his intention of laying waste our cities, and of making a common ruin of public and private property.

But beside the general causes of alarm, our apprehensions have been more immediately awakened for our own security, and we have been called upon to exert all our forces to protect our own homes from desolation. From information received, and corroborated by the movements of the enemy, there were sufficient grounds of belief that one great object of his campaign was to penetrate with his northern army by the waters of Lake Champlain and the Hudson, and by a simultaneous attack with his maritime force on New York, to form a junction which should sever the communication of the states. To defeat this arrogant design, to save the state from inroad, and our cities from destruction, it was necessary immediately to exercise fuller

powers and more ample resources than had been placed in my hands by the legislature. The exigency of the time, while it subjected the executive to great responsibility, admitted of no delay. I proceeded, therefore, to make such dispositions as were deemed indispensable to secure the exposed points against menaced invasion. To effect these objects, I found it necessary to transcend the authority and means vested in me by law; but I feel perfectly satisfied that the legislature will approve and sanction what I have done. In the meantime, I have requested this session for the purpose of devising further measures of security and defence, and of clothing some public officer with the requisite powers to carry them into effect. A particular detail of the steps which have been taken, and of those which appear to me essential for the future safety of our frontiers, will form the subject of a special communication.

When we reflect that the present campaign was one in which the enemy had threatened to visit us with his wrath, and to make us feel his power, we cannot but exult that thus far we have sustained the shock with firmness, and have even gathered laurels from the strife. He has, it is true, been able to maraud our sea-board, and harass and ruin individuals. He has even penetrated to our capital, feebly opposed by a hasty levy of undisciplined militia, and has wantonly demolished edifices and monuments of art, hitherto held sacred in all but barbarous warfare. But whenever we have met with him in fair and open contest, the result has been signally honorable to our arms. A series of brilliant actions, which shed luster upon the Niagara army, has entitled its distinguished generals, Brown, Scott, Porter, Gaines, and Ripley, and their brave associates to the lasting gratitude of their country.

The gallant deeds of Porter, Warrington, and Blakesley, have well sustained the splendid character of our navy. At the invasion of Baltimore the foe was promptly met, was harassed in his approach, and fled back with heavy

loss to his ships. But the late glorious triumph at Plattsburgh, for grandeur of circumstance and importance of effect, renders all encomium feeble and inadequate. This was the blow by which the enemy hoped to lay open our northern frontier. He advanced with confidence in the superiority of his land and naval forces, and counted on a certain victory. After a severe and bloody contest, his whole fleet was conquered and captured in the sight of his astonished army. His land troops were likewise discomfitted and driven to a precipitate and ignominious retreat before a handful of regulars under Brigadier General Macomb, and an inconsiderable body of the militia and volunteers of New York and Vermont, under Generals Mooers and Strong. The conduct of our troops on that occasion, both in repulsing the powerful assaults of the enemy, and in pursuing and harassing him in his retreat, reflects the highest honor on the commanding officers and their companions in arms.

The achievement of Commodore Macdonough and his intrepid comrades is not surpassed in the records of naval history. It sheds glory on the nation at large; but its immediate benefits are more peculiarly felt by the states of New York and Vermont. Permit me to recommend a prompt and public expression, by the constituted authorities of this state, of their high sense of the illustrious services of these brave men, who have so eminently contributed to the safety and glory of the nation; and the presentation of some testimonial of gratitude, worthy of the dignity of the state, and the acceptance of gallant and high-minded heroes.

I have heretofore submitted to the consideration of the legislature, the propriety of relieving the poorer classes of community from bearing that unreasonable proportion of the burthen of militia duty to which they are subjected by the existing laws. I must be permitted to renew my solicitations upon that subject. The experience of this

campaign has furnished abundant evidence of the unequal operation of the present system, and has shown the indispensable necessity of substituting property as the criterion of contribution to the public defence. We may then establish a more disposable, better disciplined, and more economical and efficient force, than can possibly be organized from militia at large, hastily assembled, at a moment of hurry and alarm.[1] The population and resources of this state enable us to place at the disposal of the nation, for the continuance of the war, ten thousand uniformed troops, and to reserve for local defence, ten thousand minute men, uniformed, equipped and disciplined, to take the field at a moment's warning, as a substitute for ordinary militia. It is, however, due to the militia of this state to acknowledge, that they have repaired to their country's standard whenever summoned, with promptness and alacrity; that they have cheerfully endured the hardships and privations of the camp, and that they have generally conducted themselves in action with the coolness and bravery of veteran troops.

GENTLEMEN.—It is with heartfelt satisfaction that I witness the unanimity and patriotic spirit that actuates all classes of the community. The acrimony of party has disappeared in the combined exertion for the maintenance of the national honor and common safety. The present time will form a proud era in the history of this state. It will develop the vastness of her resources, the strength of her population, the intelligence and liberality of her legislative bodies, and the valor and patriotism of her citizens. She has it in her power to assume an attitude worthy of her intrinsic character, to set an example of open handed munificence that will challenge emulation, to impart vigor

[1] Chap. 16, passed October 24, 1814, authorizing the raising of troops for the defence of the State, contained regulations concerning the classification and organization of the militia.

and effect to the national arm, and thus to secure and perpetuate the independence of the United States.

DANIEL D. TOMPKINS.

Albany, September 27, 1814.

SPECIAL MESSAGES.

September 30. To the Senate:

ALBANY, *September* 30, 1814.

"GENTLEMEN.—Conformably to a resolution made at the last session of the legislature, I have caused inquiry to be made as to the accommodation which may be obtained for the legislature in the city of New York, and herewith lay before you, the correspondence between the Mayor of the city of New York and myself upon that subject.

DANIEL D. TOMPKINS."

This correspondence consisted of a letter from the Governor to Mayor De Witt Clinton of New York, dated June 17, 1814, transmitting a copy of a resolution adopted by the Legislature; also Mayor Clinton's reply expressing the opinion that adequate accommodations could be provided, and transmitting a copy of proceedings taken by the common council of the city, setting apart certain rooms for the accommodation of the Legislature if it should determine to hold a session in New York. The Legislature met in Albany at the usual place.

September 30. To the Senate:

ALBANY, *September* 30, 1814.

"GENTLEMEN.—The report of the trial of Michael Dwyer accompanies this communication. The execution of the convict is postponed to the last Friday of March next. Serious doubts on my part, whether the evidence justified

his conviction for a higher crime than manslaughter, induces me to submit his case to the consideration of the legislature.[2]

DANIEL D. TOMPKINS."

September 30. To the Assembly:

"GENTLEMEN.—Conformably to the declaration made in my public communication, I now do myself the honor of detailing the measures of defence which have been pursued in the recess of the Legislature.

Learning that General Brown's army had retrograded to Erie, and was jeopardized, and that he had called on Major General Hall for a small militia force, I dispatched Col. John B. Yates, one of my aids, to that frontier with authority and directions to consult with the principal officers and characters there, and to make a further call for such force as might be deemed necessary. His report is herewith communicated. Part of the militia called out by that order, have crossed to Erie, and conducted like patriots and brave men, as will appear by the official letter of Major General Brown, which accompanies this message.

Taking it for granted that Sackett's Harbor would occasionally be drained of regular troops, during this campaign, and that the commanding officer there would of course be under the necessity of asking for temporary reinforcements of militia, the Major General and Brigadier Generals of the surrounding district of country, were severally instructed to comply promptly with any call for militia, without waiting to consult me; and I engaged to confirm, as far as depended on me, their official acts in such cases. Accordingly, bodies of militia have, at different times, repaired to the defence of the Harbour, and a considerable number are now in service there.

The success of the enemy at Washington, spread a momentary panic on the seaboard. The corporation of the

[2] Michael Dwyer was pardoned by chap. 7, passed October 21, 1814.

city of New York, had previously made an arrangement with the general government for the advance, in the first instance, of the funds necessary to pay three thousand militia to be called into service at New York. Upon receiving a requisition for that number of militia, it was immediately put in service. Soon after the disasters at Washington, a requisition was made by the commanding officer of the third Military District, for a large additional number of militia for the defence of New York. This call was also promptly complied with, and numbers rather exceeding the amount of the requisition, are now in the service of the United States, at New York.

The Champlain frontier was at that time considered by me, perfectly secure, and I was confirmed in this opinion, by a communication from Major General Mooers, of the militia, a copy whereof, marked C, accompanies this communication. But after I had made a call upon the militia of the interior counties to make up the number required for New York, a communication, acquainting me with the withdrawal of a principal part of the Northern army from that frontier, and with General Izard's call upon Major General Mooers, for a militia detachment, was received by me at New York, and contained the first intimation I had of that movement. An express was instantly dispatched with orders for General Mooers to comply with General Izard's demand immediately. General Mooers, however, had anticipated my orders, by calling out the militia of Clinton, Essex, and Franklin; and upon the receipt of my instructions, made a further levy for the militia of Saratoga, Montgomery and Schoharie counties, detached and organized as a part of our quota of 13,500 men, required by the President's order of the 4th of July last, and upon the Rensselaer, Washington, and Warren brigades en masse; and I directed that part of the detachment of 13,500 men, made from Rensselaer county, to repair to Plattsburgh with General Eddy's brigade. A few

of these troops had arrived, and the residue were on their way, when the glorious triumph of our naval and land forces at Plattsburgh was announced.

In addition to the militia in service at New York, I thought it my duty, with the advice of the city authorities, to organize, for the defence of New York, a body of seamen. Accordingly I have formed corps of sea fencibles, upon the principles contained in the act of Congress relative to that description of troops. But they are liable to disbandment if the Legislature should disapprove of their employment. About one thousand of this description of troops have been raised, and are stationed in the block houses, water batteries, and at other places in the harbor, where they can be most serviceable. The corporation have been so liberal as to advance the funds for paying them, in confidence that the same will be assumed and refunded by the state. As the time for which the sea fencibles have been paid in advance will soon expire, an immediate expression of the intention of the Legislature, with respect to their continuance, is desirable, to the end, that they may be disbanded without further expense, in case the employment of them should not be sanctioned.[3]

It is with regret, I notice that the militia generally have appeared without arms or equipments; and that too, where it was well ascertained that they were provided with them at home. There is no law which enables the officers to punish such delinquency. There was no alternative left, therefore, but to assume the responsibility of purchasing an additional supply of arms to equip them, or to leave the city of New York unprotected. I did not hesitate to purchase arms with funds advanced by the Corporation of New York, under an expectation that they would be reimbursed by the State. The sum advanced by the Corporation to the Commissary of this state, for providing mus-

[3] Provision for raising a corps of sea-fencibles was made by chap. 17, passed October 24, 1814.

kets, equipments, ammunition and camp equipage, and the sums advanced by them to the principal paymaster for raising, paying and equipping about one thousand sea fencibles, will be stated in a communication so soon as I may receive the returns from those officers, which they have been directed to make.[4]

In addition to these sums, five thousand dollars were advanced, at my request, to one of the Assistant Deputy and Quarter Master Generals of militia at New York, for the purpose of meeting some expenses indispensable for the comfortable accommodation of the militia, the Deputy Quarter Master General of the District not being in funds to give the requisite assistance; but a part only of the last mentioned advance has been expended, the account and vouchers for which, with the balance in hand, will be transferred to the Deputy Quarter Master General, and the State be thereby exonerated from it.

The paymasters and quarter masters of militia at New York have executed bonds with satisfactory sureties, and in large penalties, for the performance of their respective duties, and for rendering accurate and faithful vouchers and accounts for all monies which come to their hands.

The State troops now in service at New York, may be estimated, and are stationed as follows:

One division under major general Ebenezer Stevens of the militia.....	5,700
One brigade commanded by brigadier general Samuel Haight, stationed in Brooklyn.....	1,800
One brigade commanded by brigadier general Jeremiah Johnson, stationed at Brooklyn....	1,750
One brigade under the command of brigadier general John Swartwout, stationed at Staten Island.....	2,150

[4] Chap. 26, passed October 24, made provision for the repayment of sums advanced by the city of New York for the defence of the State and for other purposes.

One brigade, at Great Barn Island, under the command of brigadier general Van Orden	1,500
One brigade at Haerlem Heights, commanded by brigadier general Hermance	1,600
One brigade, stationed at Greenwich, under the command of brigadier general Peter Curtenius	1,750
A squadron of cavalry, commanded by lieut. col. James Warner	400
Sea fencibles, raised for an emergency, and stationed in the Rockaway and Gravesend blockhouses, and in forts Gates, Diamond, Stevens, &c. supposed to be in the whole, by this time.	1,000
	17,650

These troops, with the regulars, Commodore Decatur's force, the United States' sea-fencibles and the militia of New Jersey, do, in my opinion, place the city of New York in a respectable state of defence.

All the services which were rendered by my aids-de-camp since the commencement of the war, and which at times have been very arduous, were rendered gratuitously until the first day of September, instant, when the pressure of business was such as to call for their constant attendance and employment at my office; and I then ordered them into actual service, deeming it unreasonable any longer to require of them, as gratuitous, such arduous services as were needed, and for the want of which it would have been impossible for me, without destroying my health to get along with the accumulated military business of my office.

I pray the Legislature to confirm this proceeding, and to make some provision which may hereafter relieve me from embarrassment in similar cases.

Experience has, I believe, satisfied all reflecting persons that the expense, public inconvenience, waste and destruction of military stores, and interruption of agricultural pursuits, arising from calls on the ordinary militia, as now organized and regulated, are totally disproportioned to their efficiency in service, and that therefore a resort to some other measure to repel invasions, and to meet emergencies, is indispensable.

I have had the honor to suggest the propriety of organizing and having in constant readiness as an advance corps, at least twenty thousand men, uniformed, armed and equipped. These may be raised by classification or otherwise, as may best suit the views of the Legislature. Camp equipage, cannon and arms, for the equipment of that number of men, might be provided and be kept in readiness in accessible depots, and the ordinary militia might be excused from service except in a dernier resort, when the exercise of more summary authority than is now granted by law will be necessary to compel attendance and enforce prompt subordination. The organization of staff departments for the state, for districts and for corps, as nearly conformable to the staff of the army as may be practicable, is highly necessary.[5] Should an advance corps of about 20,000 men be raised, uniformed and equipped for service, it might be organized, proportioned and held in readiness, as follows:

FOR THE SOUTHERN FRONTIER.

Two Divisions.

One regiment of artillery, including company officers	1080
One brigade of sea fencibles	2160

[5] The act, chap. 16, passed October 24, to raise troops for the defence of the State, provided for a militia force of 12,000 men; chap. 17, passed October 24, authorized the Governor to raise twenty companies of sea-fencibles; and by chap. 18, passed October 24, the Governor was authorized to raise by volunteer enlistment two regiments of colored men.

One battalion of riflemen	540	
One squadron horse artillery, to act also as cavalry	540	
Two brigades of infantry	4320	
		8640

FOR THE CHAMPLAIN FRONTIER.

One Division.

A regiment of riflemen	1080	
One brigade of infantry	2160	
A squadron of cavalry	540	
A battalion of artillery	540	
Two companies of mounted riflemen	216	
		4536

FOR THE FRONTIER OF NIAGARA AND ON LAKE ONTARIO.

Two Divisions.

One regiment of riflemen	1080	
One regiment of artillery	1080	
Two brigades of infantry	4320	
One battalion of sea fencibles	540	
		7020

The ignorance of discipline of some of the officers of the militia, render it proper that the military institutions should be kept up in time of war, as nurseries for officers. A liberal gentlemen in New York has offered to uniform a corps of cadets if I would organize them, and permission has been given by the war department for three of the members of the Military Academy of the United States to take charge of and instruct and discipline them. I should be happy, with the approbation of the Legislature, to organize three companies of cadets, and to have them instructed and disciplined for militia officers; one company for New York, one for the Eastern and one for the Western District.

It is probable that no one establishment would be of more importance to the United States, and in particular to this State, than a cannon foundery upon the Hudson above the Highlands. If the Legislature will take measures separately, or in concert with individuals to erect an extensive foundery on the Hudson, I am satisfied that they will thereby greatly advance the public interests. The purchase money of a site and other expenses of an extensive foundery, will probably amount to 70,000 dollars. The establishment may, with industry, be put in operation in two months.

The power to organize the militia is vested in Congress. As that body is now in session, it is respectfully submitted whether it would not be advisable to authorize a reorganization of the militia of this State in the recess of the Legislature, so as to conform to any new organization which Congress may prescribe during their present session.

DANIEL D. TOMPKINS."

Albany, Sept. 30th, 1814.

September 30. To the Assembly:

"GENTLEMEN.—The report of the Commissioners of Fortifications at New York, is respectfully submitted. I concur in their proceedings and recommendations.

DANIEL D. TOMPKINS."

Albany, Sept. 30, 1814.

October 5. Thanking the Senate for its address.

October 10. To the Assembly:

"GENTLEMEN.—In compliance with the request contained in a resolution of the Honorable the Assembly, of the 29th *ultimo*, I beg leave to state, that the correspondence herewith enclosed, marked A. and the returns marked B. C. D., together with the annual returns of the Commissary of

Military Stores, heretofore transmitted to the Legislature, and now on their files, furnish all the information at present in my power, relative to the military stores in the arsenals belonging to this state.

DANIEL D. TOMPKINS."

October 10. To the Assembly:

"GENTLEMEN.—Estimate No. 1, which accompanies this message, is for the pay, forage and subsistence, of a brigade of infantry for one month. The monthly expenses of the quarter master's department for a brigade, in fuel, straw, ordinary camp transportation, stationery, repairs and contingencies, may be two thousand dollars.

I am unable to state the probable monthly expenses of a brigade hospital, having no department at my command to which I can resort for information of that kind; but presume they will not exceed five hundred dollars. The monthly requirements of the ordnance department may also amount to five hundred dollars.

Estimate No. 2, specifies the monthly expense of a corps of cadets. If an arrangement could be made with the general government for the education and improvement of state cadets under the professors and officers of the military institution at West Point, the expense would be diminished to about $2,250 per month. Nothing has been included in the last mentioned estimate for quarters, because the state owns two establishments on Staten Island, at each of which a corps of cadets could be accommodated without any additional expenditure.

In a former message, I mentioned the sum of seventy thousand dollars as adequate to the purchase of a site for a foundery, and for buildings, machinery, &c. to put it into complete operation. The quantity and expense of the materials requisite to supply the establishment annually, after it may be in operation, as well as the whole annual expense, must necessarily depend on the number of persons em-

ployed and the quantity of business done in the foundery, and therefore cannot be estimated with any degree of accuracy before hand. But I have reason to believe, that a foundery on the Hudson, properly equipped and conducted, would yield to the proprietors a net profit of twenty per cent. Official assurances have already been given of immediate public patronage to the extent of seven hundred and fifty tons, and there is every reason to expect a continuance of that patronage hereafter.

The preceding estimates and remarks furnish all the information which I am able at present to lay before the Legislature, upon the subjects embraced in the resolution of the honorable the Assembly of the first day of October instant.

DANIEL D. TOMPKINS."

Albany, October 10, 1814.

October 10. Thanking the Assembly for its address.

October 11. To the Senate:

"GENTLEMEN.— In compliance with the request, contained in a resolution of the Senate, dated the 10th instant, I transmit a copy of the General Order, issued on the thirteenth day of March last. I would beg leave to observe, at the same time, that the inducements for issuing that order, were the following:—

An intimation had been given, of the necessity of ordering a militia force to the Niagara frontier, in March or April last; and the militia in the immediate vicinity having been greatly harrassed during the two preceding campaigns, I thought it my duty to relieve them as far as possible, by resorting to the expedient of soliciting volunteers.

A considerable corps was raised under that order, which has shared in all the late brilliant achievements of the Niagara army, and has far exceeded in usefulness and bravery my most sanguine expectations.

I beg leave to mention further, that I have recently

learned, most of the volunteers have as yet received no pay, or compensation for their services, from any quarter; which circumstance, added to their patient perseverance and unrivalled exploits, recommends them peculiarly to the favor and patronage of the Legislature.

I avail myself of this opportunity, to renew the representation which I had the honor of making to the Legislature, on the fourth day of March last, relative to an appropriation for the pay of militia, ordered into service, under State authority, by Major General Hall, and other militia Generals, in 1813, and in the early part of the present year.[6]

DANIEL D. TOMPKINS."

Albany, October 11th, 1814.

October 13. To the Assembly: Transmitting the return of the Assistant Commissary of Military Stores for the Eastern District, supplementary to his message of the 10th instant.

October 17. To the Senate:

"GENTLEMEN.—The papers marked A and B, which you will receive with this message, contain a specification of the monies advanced by the Corporation of the city of New York, to the commissary of military stores, and an estimate of the amount necessary to fulfil his orders for further supplies.

The schedule marked C, contains the amount received from the Corporation by Paymaster Edmonds, for advance pay of the sea-fencibles, organized by me, in the manner, and under circumstances mentioned in a former message. [See note 4.]

Exclusive of the expenditures mentioned in the documents before mentioned, I have advanced various sums of

[6] Chap. 8, passed October 21, authorized additional pay to be made to the volunteers, and provided for paying the militia called into service by state authority.

money for the purchase of cannon, powder, arms, transportation of troops, barges, and other equipage for sea fencibles, expresses, &c. for the payment of which there is no existing appropriation. These sums have, of course, been drawn and advanced out of the appropriations for other objects. Wherefore it is necessary, if the Legislature should think proper to sanction these expenditures, to make an appropriation for the purpose.

On the 3d day of March, 1813, I had the honor to inform the honorable the Assembly, by message, that the accounts and vouchers for expenditures under the act, entitled 'an act further to provide for the defence of the frontiers, and for other purposes,' had been rendered to the Comptroller, and that the appropriation made by the fifth section had been exceeded, whilst there remained unexpended balances of the sums appropriated by other sections of that act. The fifth section directed, amongst other things, the purchase of camp equipage for four thousand men. The estimate for the appropriation was made in time of peace, but within ten days after the passage of the act, and before it was possible to effect the purchases contemplated by it, war was declared, which enhanced the price of every article required for camp equipage. It therefore became impossible to fulfil the direction of the Legislature to provide for four thousand men, without exceeding the sum limited by the section.

The propriety and justice of authorizing the Comptroller by a transfer of balances, to settle the accounts under all the sections of the said act, or of authorizing a return of the excess of camp equipage beyond the amount of the appropriation, is so clear, that I cannot doubt the disposition of the Legislature to adopt one of the alternatives.[7]

[7] Reimbursement of the Governor for expenditures made by him was provided for by chap. 266, passed April 18, which also authorized the presentation of claims against the federal government for expenses properly chargeable thereto.

I have not hitherto called into actual service the Adjutant General, Quartermaster General, or any of the State staff, except as specified in a late message. But should an actual command devolve on me, the assistance of some of the State Staff will be indispensable. I therefore respectfully request the Legislature to give authority upon that subject and to prescribe the additional emoluments, if any, which should be allowed in actual service to the state officers who have salaries.

I beg leave also, to request permission to appoint a military secretary, to receive no emolument, except in actual service, and then to be allowed the rank and pay of an aid-de-camp.[8]

The proceedings of the plenipotentiaries of Great Britain and America are before the public. They furnish no hopes of a speedy peace. So far from it, there is reason to believe, that a very formidable armament is preparing to assail some point of our seaboard, and I therefore hope, the Legislature will not consider me obtrusive in pressing upon their attention the vast importance of the utmost expedition in relation to whatever measures they may have in contemplation for the further defence of the city of New York.

DANIEL D. TOMPKINS."

Albany, October 17th, 1814.

October 20. To the Assembly: Transmitting the return of the superintendent of the Watertown arsenal, supplementary to his message of the 10th instant.

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[8] The compensation of the adjutant-general and other officers when called into actual service was provided for by chap. 26, passed October 24, 1814, and by the same act, the Governor was authorized to appoint a military secretary with the rank of major.

October 22. To the Senate:

Objections by the Council of Revision to a bill "concerning vessels in the port of New York." [9]

"Because, it gives to the corporation of New York, a power to remove at their discretion, at any time during the present war, and without any cause to be assigned, all or any private vessels in the harbor of New York, to any part of the state, or of the state of New Jersey, and this removal to be at the risk and expense of the owner, for which expense the owner is made personally liable to suit. This is vesting in that corporation a most arbitrary and unprecedented control over the disposition of private property, without making the power to depend upon the evidence of some absolute necessity. No doubt, when such public necessity exists, private property may be used and disposed of consistently with the public good. But upon the neglect or refusal of the owner to remove his vessel, his liability to pay the expenses of the removal, in this case, ought not to extend beyond a lien upon the ship or vessel removed."

October 24. To the Senate:

Objections by the Council of Revision to a bill "to aid in the apprehension of deserters from the army and navy of the United States."

"1. The bill makes it lawful for any person whomsoever, if he shall have cause to suspect, that any person is a deserter from the army or navy of the United States, or from the army or militia of this state, to apprehend him without warrant, and to take him before a justice of the peace. This is an arbitrary power and may be used and abused by the most worthless of men, upon a suspicion of

[9] This bill, relating to vessels in the port of New York, was not passed over the veto, but a bill on the same subject was passed, and became a law, chap. 22, on the 24th of October, 1814.

which he is to be the judge, to the vexation and oppression of the good people of this state. It is in direct violation of all the rights of personal liberty which we inherited from our ancestors, and which have been secured to us by the constitution and law of the land. By the act of the 26th January, 1787, and which was only a transcript of the provisions of Magna Charta, and is, therefore, to be regarded as a declaration of fundamental rights, 'no citizens of this state shall be taken and imprisoned but by due process of law.' And by the constitution of the United States, it is declared, that no person shall be deprived of liberty without due process of law, and that no warrants shall issue, but upon probable cause, supported by oath or affirmation. All these sacred barriers are laid prostrate before that provision in this act.[a]

2. Because, when the person so to be arrested is brought before the justice, if it shall appear to the justice from any evidence whatever, that he has probable cause to suspect, that such person is a deserter, he is required to cause him to be delivered to some military post or to commit him to gaol. This is a continuation of the same arbitrary and unconstitutional power. The justice is not bound to require any oath or affirmation to strengthen the suspicion. If without any oath or any confession of the party, it shall appear to him, 'from any other evidence,' that he has probable cause to suspect, he is bound absolutely to commit. What may be thought by any justice of the peace to be any other evidence, it would be impossible to say. Be it what it may, he has no discretion. He can take no bail. If he suspects, then the person must be imprisoned and handed over to military authority. Every citizen of this state will be liable, at all times, to the consequences of this train of suspicion, and to be placed without due process of law, under the violence of some military commander. And if the person thus summarily disposed of, shall be able, so

[a] U. S. Const. 5th Am.

far to exert himself, as to make it appear, as may well happen in numerous instances, that the suspicions are utterly groundless, there is no penalty imposed, and there is no action given to the injured party. The bill will render travelling insecure, beyond the extent of a man's immediate neighbors.

3. Because, it is made the duty of all sheriffs, deputies, constables, and all militia officers, in this state, to apprehend every person 'who shall from his appearance, dress, conversation, or otherwise give probable cause to suspect, that he is a deserter,' and to take him before a justice to be dealt with as in the former case.

4. Because, the bill makes every civil and military officer who shall wilfully neglect this duty, of thus acting upon suspicion, guilty of a misdemeanor, and punishable by fine and imprisonment. To punish an officer thus criminally, for refusing to invade the sanctity of personal liberty, upon a suspicion of which he must be the judge, and which must strike different minds with different degrees of doubt, distrust and embarrassment, is giving to our criminal code a severity beyond example.

5. Because, all non-commissioned officers and privates of the militia of this state, are declared to be bound at all times, to obey the orders of their superior officers, in the discharge of their duty, to arrest, as aforesaid, under the like penalties of fine and imprisonment, and to be entitled to pay and rations while on such service. By this means, all the militia, in their military character, are made instruments in hunting down any citizen, whomsoever, who may have the misfortune 'from his appearance, conversation, or otherwise' to fall under the suspicion of any militia officer."

The bill was not passed over the veto.

October 24. To the Assembly: Transmitting an account of military stores in the several arsenals supplementary to the special message of the 10th.

October 24. To the Assembly: Transmitting a communication from the Commissioners of Fortifications.

October 24. To the Assembly:

ALBANY, *October 24th*, 1814.

"GENTLEMEN.— The only militia that I now recollect to have been called out under state authority since the date mentioned in the resolution of the honorable the Assembly, are those referred to in a message to the honorable the Senate on the 4th day of March last, as called out by Major Gen. Hall and others, and to a small detachment of 18 men, stationed as a guard at Pultneyville for a few weeks in . All the muster rolls which have come to hand of troops ordered into state service as above mentioned, are in the hands of the pay-master, for the purpose of completing the pay and receipt rolls, and I have not been able to obtain copies of them since the receipt of the resolution.

There has been kept up at Sagg Harbour, constantly, a militia garrison of from 200 to 300 men in the service and pay of the United States, except a detachment for about one month, in 1813, called out under state authority.

A communication made to the Honorable the Assembly on the thirtieth day of September last, contains an estimate of the militia called into the service of the United States at New York and Niagara.

The militia now at Plattsburgh are in the service of the United States, and consist of a detached regiment of 803 men under the command of Lieut. Col. John Prior. I am not yet advised whether those which were called out, temporarily, by Major Gen. Mooers, previously to the attack on Plattsburgh, were so called under a regular requisition of the commanding officer of that district of the United States, or pursuant to the militia law of this State. I am inclined, however, to believe they were called for under the authority, and into the service of the United States, be-

cause, as appears by the documents transmitted with the message before mentioned, Major General Izard had previously made a requisition for militia on Gen. Mooers, and that the directions given by me to Major Gen. Mooers were to comply immediately with that requisition.

All the militia that have been ordered out on the Niagara frontier have been in the service and pay of the United States, except as first above mentioned. One regiment, detached for United States service in December or January last, has not been paid, on account of the irregular manner of making out and certifying the muster rolls. The funds, however, are in the hands of the paymaster for the purpose, and an order is expected from the War department, which will remove the obstacles that have hitherto prevented the payment.

The levy of the militia for the defence of Sackett's Harbour has been made under the authority of the United States; part of them upon the requisition of the commanding officer of the United States at that post, on the neighboring generals of militia, and the residue, upon a requisition communicated to me by the Secretary of the War Department. The exact number of militia in service at the Harbour and its vicinity, has not been reported to me, but I apprehend the number is 5000 at least.

The preceding statement, and the messages and documents referred to as heretofore communicated to the honorable the Assembly, contain all the information I am now able to furnish, in compliance with the resolution of the honorable the Assembly of the 17th instant.

DANIEL D. TOMPKINS."

Albany, October 24, 1814.

October 24. The Legislature adjourned to meet the last Tuesday of January, 1815.

1815. JANUARY.

SECOND MEETING.

The Legislature met on the 31st of January, according to adjournment.

SPECIAL MESSAGES.

February 23. To the Legislature:

"GENTLEMEN.—I have the honor to inform you, that I have received official information of the ratification of a Treaty of Peace, between the United States and Great Britain. In presenting you my congratulations on this auspicious event, I am forcibly struck with the propriety of offering up our thanks to the Beneficent Ruler of the Universe, that he has been pleased to signalize our arms by so many splendid and important victories and to conduct our beloved country, thus successfully through the perils of war. Under this impression I shall feel it a sacred duty to unite with the Legislature in recommending to the citizens of this state, the observance of a day to be devoted to suitable prayer, thanksgiving and praise.[10]

DANIEL D. TOMPKINS."

Albany, 21st February, 1815.

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[10] The treaty of peace was concluded at Ghent, on the 24th of December, 1814. News of it reached New York on the 11th of February, 1815, and Albany on the 12th. The treaty was ratified on the 17th and was proclaimed by the President the next day. The Governor's message to the Senate bears date the 21st, and to the Assembly the 22d, and was received by both houses on the 23d. On the same day the Senate adopted a concurrent resolution, which was concurred in the next day by the Assembly, approving the Governor's suggestion as to a day of thanksgiving, and recommending that he appoint a day for that purpose.

President Madison issued a proclamation designating the second Thursday (13th) of April as a day of thanksgiving for the restoration of peace, and Governor Tompkins followed with a proclamation dated the 17th of March, designating the same day in April as a day of prayer, thanksgiving and praise. These proclamations were published in the Albany Gazette, files of which may be found in the State Library.

February 24. To the Senate:

ALBANY, *February* 23, 1815.

"GENTLEMEN.—The United States have contracted for the purchase of a farm of land near Plattsburgh, on the south side of the Saranac river, on which are situated the forts, barracks, and other improvements made by the United States, now occupied as a cantonment by the army commanded by General Macomb. The assent of the Legislature of this state to the purchase is requested.

I would beg leave to mention, that certain commissioners are, by an existing law of this state, empowered in behalf of the Legislature, to assent to the purchase by the United States of lands in the county of Suffolk, Queens, Kings, Richmond and New York, and to cede lands under water in the bay of New York; and would respectfully suggest the propriety of making certain public officers, agents for expressing such assent, and making such cession, in any part of the state, when required. It will be found on examination, that cessions heretofore made by the commissioners, are better guarded by restrictions, limitations and reservations, in favor of this state, than are any of the declarations of assent, or cessions of jurisdictions made by acts of the Legislature.[11]

DANIEL D. TOMPKINS."

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[11] By chap. 121, passed March 31, 1815, the Governor, Lieutenant-Governor, Chancellor, Chief Justice of the Supreme Court, Secretary of State, the Attorney-General, and the Surveyor-General, or any four of them, of whom the Governor should always be one, were authorized to cede to the United States lands purchased and to be used for forts, magazines, arsenals, etc., on the northern or western frontier but not to exceed five hundred acres in any county. The commissioners appointed by the act of 1807 were authorized to cede to the United States certain specified lands in and about New York which might be deemed necessary for the defence of that city and port. See L. 1896, chap. 391, which vested in the Governor power to execute deeds of cession of lands to the United States for specified public purposes.

February 24. On the 22d of October, 1814, the Senate and Assembly unanimously adopted the following resolution:

"*Resolved*, That the House of Assembly, of the State of New York, view with mingled emotions of surprise and indignation, the extravagant and disgraceful terms proposed by the British Commissioners at Ghent; that however ardently they may desire the restoration of peace to their country, they can never consent to receive it at the sacrifice of national honor and dignity; that they, therefore, strongly recommend to the National Legislature, the adoption of the most vigorous and efficacious measures in the prosecution of the war, as the best means of bringing the contest to an honorable termination, and of transmitting unimpaired to their posterity, their rights, liberty and independence."

The Governor was requested to transmit a certified copy of it to the President. This was done, and on the 24th of February, the Governor transmitted to the Legislature the President's reply as follows:

WASHINGTON, *Nov. 12th*, 1814.

SIR.—I have received your letter of the 5th inst. conveying a unanimous resolution of the two houses of the Legislature of New York, expressing the emotions with which they view the terms of peace proposed by the British commissioners at Ghent, and recommending the most vigorous measures for bringing the war to an honorable termination.

This language does great honor to the patriotism and just sentiments of the state by whose public councils it has been adopted. And the resolution derives additional value from the unanimity stamped upon it.

Such a devotion everywhere to the rights and dignity of our country, is alone necessary to a speedy triumph over the obstacles to an honorable peace. And such an example

could proceed from no source more entitled, or more conducive, to patriotic emulation.

Accept, sir, assurances of my high esteem, and my friendly respects.

JAMES MADISON.

February 24. To the Assembly: Transmitting resolutions adopted by the Legislatures of Massachusetts, Connecticut and Georgia, proposing certain amendments to the federal constitution.[12]

The Georgia resolution proposed to reduce the official term of senators from six years to four years. The Massachusetts and Connecticut Legislatures proposed the following amendments:

"Art. I. Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers of free persons, including those bound to serve for a term of years, and excluding Indians not taxed, and all other persons.

Art. II. No new State shall be admitted into the Union by Congress in virtue of the power granted by the Constitution, without the concurrence of two thirds of both houses.

Art. III. Congress shall not have power to lay an embargo on the ships or vessels of the citizens of the United States in the ports or harbors thereof, for more than sixty days.

Art. IV. Congress shall not have power without the concurrence of two thirds of both houses, to interdict the commercial intercourse between the United States and any foreign nation, or the dependencies thereof.

Art. V. Congress shall not make, or declare war, or authorize acts of hostility against any foreign nation, without the concurrence of two thirds of both houses; except

[12] The Assembly passed a resolution disapproving the Georgia proposition as to the official term of Senators, but the Senate did not concur. The Assembly also adopted a resolution disapproving the amendments proposed by Massachusetts and Connecticut.

such acts of hostility be in defence of the territories of the United States, when actually invaded.

Art. VI. No person, who shall hereafter be naturalized, shall be eligible as a member of the Senate or House of Representatives of the United States, nor capable of holding any civil office under the authority of the United States.

Art. VII. The same person shall not be elected President of the United States a second time; nor shall the President be elected from the same State two terms in succession."

February 24. To the Assembly: Transmitting the annual report of the inspector of flour and meal and of the inspector general of staves and heading.

February 25. To the Assembly: Transmitting a resolution adopted by the Legislature of New Jersey disapproving the foregoing amendment proposed by Massachusetts and Connecticut.

February 27. To the Senate:

ALBANY, *February* 27, 1815.

"GENTLEMEN.—The Arsenal in this vicinity, and the land appurtenant to it, have by a late law, been included in the bounds of the city of Albany; and the land has become extremely valuable for building lots.

The Arsenal was badly planned and built in the first instance, and is now so old and imperfect as to require incessant and expensive repairs. It is also necessary, for the purpose of conducting the business of that establishment beneficially, to keep a deposit there of some cartridges, powder and other combustible matter, which creates uneasiness and alarm in the minds of the inhabitants of the neighborhood. I beg leave, therefore, to recommend the sale of the Arsenal, grounds and buildings belonging to the state in the late Colonie, now city of Albany, and to apply the consideration monies in the purchase of another site

in some more convenient and less dangerous place, and in the building of a new arsenal, workshops, &c. thereon.[13]

I have experienced much inconvenience by reason of the residence of the principal commissary in New York. He ought, like all other heads of state departments, to reside at or near the seat of government. I therefore beg leave to recommend a provision requiring the principal commissary to reside at Albany, where the distributing depot ought to be fixed; and to give him four assistants; one to reside in New York, one in Elizabethtown, Plattsburgh or Malone, one at Rome, Watertown or Russel, and one at Onondaga, Canandaigua or Batavia.[14]

DANIEL D. TOMPKINS."

March 8. To the Assembly: Transmitting a communication from the Governor of Maryland with a resolution adopted by the legislature of that state, disapproving the Pennsylvania proposition to reduce the official term of senators from six years to four years.

March 11. To the Assembly: Transmitting the annual return of the commissary of military stores.

March 13. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

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[13] The Legislature adopted the Governor's suggestion, and by chap. 225, passed April 17, 1815, required the Surveyor-General to dispose of the Colonie (Watervliet) arsenal and appurtenant property at public sale, and directed the Governor to apply the proceeds "in the purchase of a site, and in the erection of a new arsenal, workshops, laboratory and other buildings appurtenant to an arsenal, which site shall be within five miles of the capitol in the city of Albany."

[14] Chap. 263, passed April 18, 1815, amending an act relative to the inspection of sole leather, and for other purposes, contained a provision for the appointment of a Commissary-General of ordnance and military stores, who was required to reside at Albany. The same act provided for the appointment of assistant commissaries for the southern, eastern and western districts, and fixed the compensation and prescribed the duties of the chief and assistant commissaries.

March 22. To the Assembly: Transmitting the annual return of the militia.

March 27. To the Assembly: Transmitting a resolution adopted by the Rhode Island legislature disapproving the Georgia proposition to reduce the official term of United States senators from six years to four years.

April 1. To the Assembly: Transmitting a resolution adopted by the legislature of Pennsylvania disapproving the amendments to the federal constitution proposed by Massachusetts and Connecticut, as set forth in the special message of February 24.

April 17. To the Senate:

"GENTLEMEN.—In time of peace, permanent works of defence as well as munitions which are not of a perishable kind, can be erected and procured with more economy and to a greater public advantage than during or on the eve of a war. The commissioners of fortifications have communicated to me their unanimous opinion, that the permanent works of masonry, erecting by the state, should be completed and equipped, notwithstanding the restoration of peace. Most of the materials for the completion of the works have been procured, and are on the spot, and should the works stop at this juncture, the unfinished walls will be greatly injured, if not rendered entirely useless, in a short time. I concur fully and decidedly in the opinion of the commissioners, and have requested them to proceed accordingly. To equip and furnish the works completely, a further appropriation of twenty-five thousand dollars will be required.

I would, also, respectfully advise, that the legislature add to our stock of arms, and of munitions which are not perishable, and that at least two thousand muskets and equipments, and five hundred rifles, ten cannon with car-

riages and implements, and one hundred barrels of powder be purchased annually.

To meet the expenses of the commissary's department, an appropriation of $20,000 is respectfully recommended.

Provision has heretofore been made, by law, for the pay and subsistence of militia called into state service, pursuant to the militia law of this state. But there have occurred in that service expenses for the transportation of baggage, and for other contingencies, the payment of which has not been hitherto provided for by law. The quarter-master-general of the state is the proper officer to adjust and pay such accounts. The amount adequate to meet the last mentioned object cannot be ascertained with accuracy at present. It will not, probably, exceed five thousand dollars in the whole.[15]

DANIEL D. TOMPKINS."

April 17. To the Assembly:

ALBANY, 17*th April*, 1815.

"GENTLEMEN.—I have the honor to lay before the Legislature copies of communications, transmitting to the respective officers and persons named therein the concurrent resolutions of the Senate and Assembly, of the 22d day of October last, with copies of the answers which have been received.[16]

DANIEL D. TOMPKINS."

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[15] The Legislature in response to this suggestion, by chap. 266, appropriated $25,000 for the completion of the fortifications then in process of construction on Staten Island. The same act authorized the purchase of arms, ordnance and military stores as suggested by the Governor.

An appropriation for the expenses of the commissary department was also included in this act, and also $5,000 as suggested by the Governor for the expenses of the quarter-master's department.

[16] Chap. 24, passed October 24, 1814, made an appropriation for the expenses to be incurred by the Governor in carrying into effect the resolutions of thanks for special military and naval services during the war of 1812, and set apart for Commodore Thomas Macdonough one thousand acres of unappropriated land in the town of Sterling, Cayuga county.

The following are the resolutions:

"*Resolved unanimously,* That Major Generals Brown, Scott and Gaines, and Brigadier Generals Ripley and Miller, of the army of the United States, and Major General Porter of the militia and volunteers of this State, for their conduct during the present campaign, are entitled to the gratitude of their country, and the Legislature present to them, respectively, a sword.

Resolved unanimously, That Brigadier General Macomb, of the army of the United States, and Major General Mooers, of the militia of this State, and Major General Strong, of the Vermont volunteers, for their conduct at the battle of Plattsburgh, are entitled to the gratitude of their country, and the Legislature present them, respectively, a sword.

Resolved unanimously, That Commodore Macdonough, in maintaining the honor of the American flag on Lake Champlain, against the superior force of a hostile fleet, is entitled to the gratitude of his country, and the Legislature present him with a sword, and 1,000 acres of land.

Resolved unanimously, That this Legislature deplore the loss of Brigadier General Davis of the militia of this State, who fell in the sortie from Fort Erie, and present his eldest male heir with a sword.

Resolved unanimously, That this Legislature deplore the loss of Brigadier General John Swift, of the militia of this State, who fell near Fort George, and present his eldest male heir with a sword.

Resolved unanimously, That his Excellency the Governor be requested to communicate severally, to those surviving officers, the high sense entertained for their patriotism, talents and conduct, and through them, the thanks of this Legislature to the officers of the army and navy, and the soldiers and sailors whom they have led to victory."

The following is the correspondence referred to in the Governor's message:

NEW YORK, *4th November,* 1814.

SIR.— It is with heartfelt satisfaction that I comply with the direction of the Senate and Assembly of the State of New York, in transmitting a copy of their unanimous resolutions, of October 20th [22], expressive of the high sense

entertained by them of your patriotism, talents and conduct; and of their thanks to yourself, and to the officers and seamen, who were your companions in the celebrated battle on Lake Champlain.

The estimation in which I hold the importance and glory of the victory on the memorable 11th September, demands of me the most unqualified acknowledgment and applause; and inspires me with the most ardent wishes for the lasting prosperity of those who were the heroes of that day.

I have the honor to be,
With the most respectful esteem,
Your obed't. servant,
DANIEL D. TOMPKINS.

Commodore MACDONOUGH.

U. S. FRIGATE CONFIANCE,
WHITEHALL, *November 20th*, 1814.

SIR.—I have the honor to acknowledge the receipt of your Excellency's letter of the 4th inst. transmitting the resolutions of the honorable the Legislature of the State of New York, also an extract of a law of the same state, for the presentation to me of a grant of land in the town of Sterling.

This act of such distinguished honor to an individual, for only performing his duty to his country, and munificence, in raising him to a state of independence, fully receives my most sincere thanks, replete with feelings of lasting gratitude.

In procuring the sword, I beg your Excellency will consult your own convenience.

Accept, I beg you, Sir, of my warmest acknowledgments, for the flattering manner in which you have always been pleased to express yourself of my services.

I have the honor to be, very respectfully,
Your most obed't servant,
T. MACDONOUGH.

His Excellency DANIEL D. TOMPKINS.

NEW YORK, *24th December*, 1814.

SIR.—I have the honor to transmit to you the unanimous resolution of the Senate and Assembly of the State of New York, expressive of the exalted idea which they entertain of the very eminent services which you have rendered your country during the last campaign.

As a testimony of the gratitude of this state, I am charged to present you a sword; a duty which I shall hereafter perform with feelings of the liveliest gratification.

I am directed by the Senate and Assembly to communicate to you, in the most emphatic manner, the high sense which they entertain of your patriotism, talents, and conduct; and to request you to convey their thanks to the officers and soldiers of that gallant army which you led so often to victory.

Accept, sir, an assurance of my high estimation of your gallantry and talents, and of my great personal consideration and esteem.

DANIEL D. TOMPKINS.

Major General BROWN.

BROWNVILLE, *January 1st*, 1815.

SIR.—I have the satisfaction to acknowledge the receipt of your Excellency's letter of the 25th ult. enclosing the resolutions of the Senate and Assembly of the State of New York, approving my conduct, and that of the officers and soldiers of the gallant army of Niagara. Every officer and every man entitled to participate in the honor conferred, will hold in great estimation the approbation of the representatives of this enlightened and high minded state.

I do not know how to express my sense of the obligation I feel under to your Excellency, for the very favorable manner in which you have been pleased to notice my conduct. As I am proud of the approbation of those I esteem, so I shall always hold in high estimation the good opinion

of your Excellency, and will endeavor so to demean myself as to merit the continuance of your regard.

I pray you Sir, to accept the assurance of the very great respect and consideration with which I have the honor to remain.

Your Excellency's most obedt. humble serv't,

JACOB BROWN.

His Excellency DANIEL D. TOMPKINS.

NEW YORK, 24*th December*, 1814.

SIR.—As a testimonial of the high sense which the Senate and Assembly of the State of New York entertain of your talents, patriotism and brilliant exploits, they have unanimously resolved to present you with a sword; and have also instructed me to communicate an acknowledgment of their gratitude to you, and to the officers and soldiers whom you have so often led to victory.

On a future occasion, I shall have the honor of presenting to you the sword. In the meantime, I beg you to be assured of my personal regard, and of my exalted opinion of your conduct and eminent services.

DANIEL D. TOMPKINS.

Major General SCOTT.

HEAD-QUARTERS, 4TH AND 10TH MILITARY DISTRICT.
BALTIMORE, *January* 12, 1815.

SIR.—I have had the honor to receive through your Excellency, a resolution passed by the Legislature of the State of New York, expressive of its approbation of my military conduct during the late campaign.

I need not assure your Excellency and the Legislature, of the pride and the satisfaction it has afforded me, to find my name so honorably enrolled by that state among those who have deserved well of their country; to have attained

this distinction, it is at once the soldier's glory and reward; and I beg leave to add my personal acknowledgments for the very handsome manner in which the resolution has been communicated.

I have the honor to be,
With high consideration,
Your Excellency's most obed't. servant,
W. SCOTT, Maj. Gen. U. S. A.

His Excellency DANIEL D. TOMPKINS,
Governor of the State of New York.

NEW YORK, *December 24th,* 1814.

SIR.—The enclosed resolutions of the Legislature of the State of New York express their high sense of your patriotism, talents and distinguished gallantry, during the late campaign. As a token of the high estimation in which they hold your conduct, and of their gratitude for your services, they have directed me to present you with a sword. I shall comply with that injunction with heartfelt satisfaction, and seize this occasion to tender to you an assurance of my high estimation of your conduct and services, and of my ardent wishes for your prosperity and welfare.

DANIEL D. TOMPKINS.

Major General GAINES.

NEW ORLEANS, (L.) *February* 16, 1815

SIR.—I have had the honor to receive your excellency's letter of the 24th December last, enclosing a resolution of the Legislature of the State of New York, expressive of their approbation of my conduct during the late campaign, and presenting to me a sword.

I beg leave to tender to the Legislature, through your Excellency, my grateful acknowledgments for this honorable token of their approbation, which is the more accept-

able to me, as being the unanimous offering of an enlightened body of patriotic citizens, some of whom witnessed, and all of whom had good opportunities of being correctly informed of, the conduct of the army with which it was my good fortune to serve; and at the head of which, (after its distinguished chiefs had been compelled by their wounds to retire,) I had the happiness to meet the enemy.

When I call to mind the interesting scenes of the late campaign, the heroic spirit and inestimable worth of the officers and men with whom I acted in some of those scenes, it will ever be to me a source of much gratification to remember, that among them were many gallant sons of the state of New York, whose Legislature have done me so much honor.

I feel very grateful to your Excellency for the polite and elegant terms in which you have been pleased to communicate to me the resolution of the Legislature. In return, I offer you my best wishes for a long continuance of your health and happiness, and have the honor to be, most respectfully,

Your obed't. servant,
EDMUND PENDLETON GAINES,
Major General by brevet.

His Excellency Governor TOMPKINS.

NEW YORK, *24th December,* 1814.

SIR.— The Senate and Assembly of the State of New York, duly sensible of the services of those heroes who have fought for their country during the late campaign, have unanimously adopted the enclosed resolutions, which you will please to communicate to the officers and soldiers whom you led to victory. I shall avail myself of the earliest opportunity to deliver the sword which they have resolved to present you as a testimonial of their high sense of your talents, patriotism and conduct.

Permit me, Sir, to add my admiration of the gallantry exhibited by you, and those under your command, with an assurance of my esteem and regard.

I have the honor to be, Sir,

Your most obed't humble servant,

DANIEL D. TOMPKINS.

Brigadier General RIPLEY.

ALBANY, *February 5th*, 1815.

His Excellency Gov. TOMPKINS,

SIR.—I have the honor to acknowledge the reception of your communication, enclosing resolutions of the Legislature of New York, of the 20th of October last.

The commendation they have been pleased to bestow upon my conduct, and that of the troops under my command, during the interesting campaign of the Niagara, is received with the most lively sensibility. It affords me the highest satisfaction, that during an eventful, and at sometimes critical period, the gallant conduct of the troops composing our army should be duly appreciated by the legislature of a state, so animated with patriotism, fertile in resources, and powerful in population.

For myself, Sir, I am sensible that so far as I participated in the field of glory, the credit is entirely due to the gallant troops under my command. Under the pressure of every occurrence, whether of prosperous or adverse fortune, they encountered peril without apprehension, and hardships without a murmur.

For the obliging manner in which the resolutions have been communicated to me, I beg you, Sir, to receive my thanks, and assurances of respect, with which I have the honor to be

Your obed't. humble servant,

E. W. RIPLEY.

NEW YORK, *24th December,* 1814.

SIR.—I have the honor to convey to you the unanimous resolutions of the Senate and Assembly of this State, declaratory of their high sense of your patriotism, talents and conduct, and of their gratitude for your distinguished and gallant services in the late campaign.

To me, who know the difficulties which you have had to encounter in collecting and organizing your brave band of volunteers, the duty of transmitting this public tribute to their patriotism and valor is peculiarly grateful.

I pray you to receive for yourself and your brave companions in arms, my grateful sense of their heroism and good conduct throughout the term of their service, and my devout wishes for their future prosperity and happiness.

I am, Sir, with great consideration and esteem,

Your obed't. servant,

DANIEL D. TOMPKINS.

Major General PETER B. PORTER.

WASHINGTON, *January 10th,* 1815.

SIR.—I have the honor to acknowledge the receipt of your letter of the 24th ult. enclosing the concurrent resolutions of the Senate and Assembly of the State of New York, expressive of their approbation of my conduct, as well as that of other officers, during the last campaign.

The unpromising auspices under which the volunteers engaged in service, presented scarcely a motive to their exertions, excepting that great one, which I hope in God is implanted in the bosom of every American citizen—a resolute determination to support, at every hazard, the rights and liberties of his country, against an enemy, distinguished alike for the arrogance of his national pretentions, and the savage character of his warfare.

To have been so fortunate, under such circumstances, as to gain the unanimous approbation of the enlightened and

patriotic Legislature of New York, is particularly grateful; and permit me to add, that the pleasure I derive from the favorable sentiments expressed in those resolutions, is not a little heightened by the flattering terms in which you have been pleased to communicate them.

I have the honor to be,
With the highest respect,
Your Excellency's obed't serv't.
PETER B. PORTER.

His Excellency Governor TOMPKINS.

NEW YORK, 24*th December*, 1814.

SIR.—The Senate and Assembly of the State of New York have unanimously resolved, that your conduct during the last campaign, entitles you to the applause and thanks of your country, and have directed me to present you with a sword, as a testimony of their gratitude and high sense of your talents, patriotism and conduct.

I shall have the honor to convey to you the sword at a future day; and avail myself of this opportunity to offer you a declaration of my respect and esteem, and of my admiration of your gallantry and brilliant achievements.

DANIEL D. TOMPKINS.

Brigadier-General MILLER.

BOSTON, *March 4th*, 1815.

SIR.—I have the honor to acknowledge the receipt of your Excellency's highly gratifying communication of the 24th December last, with its enclosed resolutions of the honorable the Senate and Assembly of the State of New York, approbatory of my conduct during the last campaign, and unanimously voting me a sword in testimony thereof.

The execution of duty is a soldier's consolation; and its acknowledgment by a grateful country his greatest reward.

For me it will ever be a source of happy reflection, that my conduct has been such as to meet the approbation of so

very respectable and enlightened a body of my countrymen as that of the Legislature of New York.

Your Excellency will be pleased to accept for yourself, and present to the honorable the Senate and Assembly of the state over which you preside, my grateful acknowledgments for the highly pleasing and liberal expressions of your approbation, as well as for your very honorable testimonial.

I have the honor to be,
With sentiments of the highest respect,
Your Excellency's most obed't. servant,

JAMES MILLER,
Brig. Gen. U. S. Army.

His Excellency DANIEL D. TOMPKINS.

NEW YORK, *5th December*, 1815.

General ALEXANDER MACOMB,

I have the honor to present to you, the unanimous resolutions of the Senate and Assembly of the State of New York, expressive of the high sense entertained by them of your patriotism, talents and conduct, and of their gratitude for the eminent services rendered by you at the battle of Plattsburgh.

I pray you to communicate to the officers and soldiers, who shared in the victory, the thanks of the state of New York; and at the same time to accept assurances of my full participation in those acknowledgments of worth and valor, which it is my pleasing duty to transmit.

With sentiments of the highest respect and regard,
I am, Sir, your obed't. serv't.

DANIEL D. TOMPKINS.

HEAD-QUARTERS, PLATTSBURGH, *December 20th*, 1814.

SIR.—I have the honor to acknowledge the receipt of your Excellency's letter of the 5th instant, covering resolutions of the Senate and Assembly of the State of New York.

An expression of approbation by an enlightened body, is the richest reward of a soldier, and the very flattering manner in which the Legislature have been pleased to notice my conduct, will be among the proudest recollections of my life.

I will convey to the troops, the sentiments entertained by the state of New York of their gallant deeds, which will not fail to inspire them with a just pride in the performance of their duty, and fortitude in the hour of danger.

I beg leave to add assurances of the high consideration and respect with which I am

Sir, your most obed't. serv't.

ALEX. MACOMB.

His Excellency DANIEL D. TOMPKINS,

Governor and Commander-in-Chief.

NEW YORK, *December* 24, 1814.

SIR.—I have the honor to transmit to you, an unanimous resolve of the Senate and Assembly of this State, expressive of their high sense of your conduct at the battle of Plattsburgh, on the 11th of September last. In addition to this expression of their sentiments, I am charged to present to you a sword, as a trophy of that memorable day. It is with pride and satisfaction that I have become the organ of public sentiment on this occasion; and while I unite my individual feelings, I pray you to receive for yourself, and to communicate to the officers and soldiers of the militia who fought under you, the thanks of the Legislature, and the high sense entertained by that body of their patriotism, talents and conduct.

I have the honor to be, with great consideration and esteem,

Your obedient servant,

DANIEL D. TOMPKINS.

Major General BENJAMIN MOOERS.

PLATTSBURGH, 2*d January*, 1815.

SIR.—I have the honor to acknowledge the receipt of your excellency's letter of the 24th *ultimo*, covering the unanimous resolution of the honorable the Senate and Assembly of this State, approving my conduct, and that of the officers and soldiers under my command at the battle of Plattsburgh, on the 11th of September last.

To have aided in repelling an invading foe, was a duty incumbent on us as citizens, and as soldiers, and the success accompanying our efforts was a double source of gratification to myself, and to my companions in arms. And be assured, sir, that the recollection of that day, thus united with the expression of public sentiment by the representatives of the State, will always be felt with emotions of pleasure and satisfaction.

To the officers and soldiers who were my companions, I will immediately communicate in orders, the thanks of the honorable the Senate and Assembly, and the high sense entertained by those bodies of their patriotism and conduct on that memorable occasion.

Please, sir, accept my warmest acknowledgments for the favorable notice by your Excellency of my conduct, and those of my command in arms on the above occasion, and for the confidence reposed in me by you, and also for the aid and assistance I have received from you at different times, relative to the defence of this frontier.

I am, Sir, with great respect,

Your Excellency's very humble serv't.

BENJ'N MOOERS.

His Excellency DANIEL D. TOMPKINS.

NEW YORK, *December 24th*, 1814.

To Major General STRONG, of the Vermont Volunteers.

SIR.—The Legislature of the State of New York, in contemplating the zeal and alacrity manifested by the citizens

of Vermont, when this state was menaced by a powerful enemy, and the eminent services rendered by them, have unanimously resolved that you, their leader, are entitled to the gratitude of your country, and that the volunteers who shared with you in the glory of the battle of Plattsburgh, have justly merited the thanks of this state.

In obedience to the joint resolution of the Legislature, (a copy of which is enclosed) I shall hereafter have the honor of presenting you a sword, as a memorial of the proud victory in which you took so distinguished a share.

It is with the liveliest feelings, that I convey to you the high sense entertained by this state of your patriotism, talents and conduct; and I must pray you to communicate to the gallant volunteers of Vermont, both officers and men, who under you, stepped forth in a moment of peril in defence of this state, the thanks of a grateful people.

I have the honor to be, Sir,

Your obed't. servant,

DANIEL D. TOMPKINS.

VERGENNES, *January 8th*, 1815.

DR. SIR.—I have had the honor of receiving your favor of the 24th December, enclosing a resolution of the Legislature of the State of New York, expressing the sense they entertain of the conduct of the men I had the good fortune to command on the late invasion of the northern frontier by the enemy.

The flattering approbation expressed of our services on that occasion, is received with lively emotions, and should the enemy have the temerity again to invade us, will be an additional pledge of a warm reception from our mountaineers.

I shall most cheerfully comply with your Excellency's request, in communicating to the officers and men under

my command on the 11th September last, the high compliments contained in the resolution of your Legislature.

I have the honor to be,
With sentiments of respect,
Your Excellency's obed't. servt.
SAMUEL STRONG.

NEW YORK, *December 24th,* 1814.

MADAM.—As a tribute of respect to the memory of your late husband, Brigadier General John Swift, the Senate and Assembly of the State of New York have unanimously passed the enclosed resolutions, in testimony of their gratitude for his eminent services; and have presented to his eldest male heir a sword. Permit me to assure you, madam, that, equally with the Senate and Assembly, I admire the patriotism and gallantry of the late General Swift, and condole with you in the bereavement which you and the country have sustained by his death.

With emotions of sympathy for your affliction, and with sincere prayers for your consolations and welfare, I have the honor to be,

Madam, your most obedient, and very humble serv't.
DANIEL D. TOMPKINS.

Mrs. SWIFT, widow of the late Brigadier-General John Swift, of the militia and volunteers of the state of New York.

NEW YORK, *December 24th,* 1814.

SIR.—The enclosed documents will make known to you the feelings and sentiments of the Senate and Assembly of the State of New York, upon the death of your late respected father, Brigadier General John Swift, and their high sense of his meritorious services. I shall hereafter transmit to you the sword which the representatives

of a generous and grateful people consecrate as a memorial of his virtue and noble deeds. Should the period ever arrive which shall require you to unsheath that sword, may you imitate the conduct of your deceased father, by wielding it solely in the cause of glory, and in defence of your country; and may your deeds of gallantry, like his, receive universal applause and gratitude.

DANIEL D. TOMPKINS.

To ASA R. SWIFT, eldest male heir of
Brig. Gen. John Swift, of the New
York Volunteers.

PALMYRA, 15*th March*, 1815.

To His Excellency Gov. TOMPKINS,

SIR.—Your letter of the 24th December last was received with emotions of the deepest gratitude and respect. In rendering to his country those services which every citizen owes, my lamented father has left to his offspring an example which it will be my highest ambition to imitate. That his memory should be embalmed in the affectionate remembrance of his fellow citizens, and that their representatives in the Senate and Assembly of this state should have commemorated his services, and deplored his loss, in the document which your Excellency has been pleased to communicate to me, while they assuage the poignancy of my regrets, will ever, I trust, excite my ardor to emulate his deeds, and be, like him, ready to devote my life to the good of my country.

The sword which a munificent and magnanimous Legislature have been pleased to grant me, will be religiously preserved, as a sacred memorial of their generosity, and of the virtue of my lamented parent. In peace it will be a monitor of the duties of a citizen; in war it will be the avenger of the wrongs of my country.

To your Excellency, and the representatives of the people, I have nothing to return but the thanks and blessings

of an orphan, who, in all the vicissitudes of life, will be grateful for their munificence, and will endeavor to evince that it has not been bestowed on an object wholly unworthy.

With great respect,

Your Excellency's obedt. serv't.

ASA R. SWIFT.

NEW YORK, *December 24th*, 1814.

MADAM.— The Legislature of the State of New York, highly sensible of the distinguished gallantry exhibited by your late husband, Brigadier General Davis, in the sortie at Erie, have unanimously passed the enclosed resolution, deploring the loss sustained by our country in his death. They have also instructed me to present to his eldest male heir a sword, which they bestow as a memorial of gratitude for the conduct and services of the father. I know of no circumstances, Madam, which ought more to assuage the poignancy of your grief on this melancholy occasion, than the recollection which this communication must offer, that the representatives of this state have not been unmindful of the merits of the deceased, and that the tears of a grateful people are mingled with yours in moistening the sod which covers his remains.

Permit me, madam, to offer my sincere condolence, and to assure you of the sincere regard with which I have the honor to be,

Your most obedient humble servant,

DANIEL D. TOMPKINS.

To Mrs. DAVIS.

NEW YORK, *December 24th*, 1814.

SIR.—You will perceive by the enclosed document, that the Senate and Assembly of the State of New York are sensible of the distinguished merit and conduct of your

lamented father, Brigadier General Davis, in the sortie from Fort Erie, and sincerely deplore his death. They have charged me to present you a sword, as a mark of public gratitude, for his generous and gallant services. I shall hasten to convey to you the memorial which a grateful people consecrate to one of their most illustrious defenders. I beseech you to bear in mind that it is the meed of patriotism and of virtuous self-devotion, and should ever a crisis arrive which shall require you to unsheath it, emulate the deeds of your heroic sire, and think no sacrifice too great in the cause of a beloved country. May you follow his footsteps in the paths of virtue and of glory, and be prosperous and happy.

I am, with great regard,

Your most obed't. and humble serv't.

DANIEL D. TOMPKINS.

To ALFRED DAVIS, eldest male heir of the
late Brigadier General Daniel Davis,
of the New York militia.

LE ROY, *March 20th*, 1815.

His Excellency GOVERNOR TOMPKINS,

SIR.—Alfred Davis, the eldest male heir of the late Brigadier General Daniel Davis, has received a letter which your Excellency addresses to him under date of the 24th December last. His tender age prevents him from personally expressing to you his feelings on this occasion, and at his request, I am induced as a neighbor, and one of the military family of the late General Davis, to assure you, and the honorable the Senate and Assembly of the State of New York, of the deep sense of gratitude with which he receives the testimonials of honor and respect which a generous and magnanimous Legislature has been pleased to confer on the memory of his lamented father. It will be the highest object of his ambition, never to dis-

grace the sword, which a generous public spirit has awarded to the discharge of those patriotic duties which every citizen owes to his country. It will be the study of his friends to impress on his mind the injunctions contained in your Excellency's letter, and be assured, sir, that they and he will ever cherish with the proudest recollection the legacy of honor and virtue which his lamented father has left him.

I am, Sir, with the greatest respect,

Your Excellency's obed't. humble servant,

WILLIAM SHELDON,
Aide-de-Camp to the late General Davis.

April 18. To the Assembly:

Objections by the Council of Revision to a bill "for the payment of certain officers of government, and for other purposes." [17]

"Because by the last section of the bill, a new apportionment and alterations are made in the Senatorial districts, by increasing the number of Senators in the Southern district without any enlargement of the district; and by diminishing the number of senators in the Eastern District, and detaching from it the counties of Jefferson and St. Lawrence, and annexing them to the Western District.

By a law of the present session of the Legislature, the districts have been altered, and, according to the return of the last census, an apportionment of the Senators has been made in pursuance of the directions of the 4th article of the amendments to the constitution. If the apportionment upon the Southern district which has already been made by law, was a true and just one, (and no mistake ap-

[17] This bill was not passed over the veto, but an appropriation act, which was a manifest necessity, was passed, and became a law, chap. 266, on the 18th of April, 1815; it did not include any provisions relative to apportionment.

pears or is alleged) then this new apportionment, in granting an additional Senator to that district, cannot be true and just, for there is not, and cannot be, any evidence of any increase of that district since the apportionment was made."

April 18. The Legislature adjourned without day.

1816. JANUARY. LEGISLATURE, THIRTY-NINTH SESSION.

DANIEL D. TOMPKINS, Governor.

The Legislature met on the 30th of January. On the 2d of February, the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—In meeting the legislature for the first time since the termination of the war with Great Britain, allow me to congratulate you on that event, and of the negotiation of an honorable, and I trust, a permanent peace. Sensible of its blessings, we ought to ascribe its attainment to the direction of that Providence under whose auspices we have been protected through the perils and embarrassments of war.

It is with the proudest sensations, we can recur to the character and incidents of the late war, to the unwearied valor and firmness which marked the progress of our arms through every vicissitude of peril and discomfiture, which courted every exposure and braved every danger, and which in its termination, has, in an eminent degree, contributed as well to strengthen our confidence in the efficacy and stability of our political institutions as to elevate our national character abroad.

It had been matter of much speculation, whether our government, in its organization, was well calculated for a state of war; and it had been apprehended that, wanting the consolidated energies of a monarchy, its powers would act without concentration, and of course, without effect. The late glorious contest has, however, established the fallacy of the objection, and the perfection of its system. It has presented, with some triumph to the world, the refutation of an opinion which denied to republics a capacity to resist the assaults of exterior hostility; and it has practically shown that a free nation, not only destitute of the system, the science and experience which give perfection to military operations, but deprived even of the signal benefits resulting from unanimity, has been able to resist with success the most desperate efforts of an enemy enured to war, and possessing all the advantages of veteran force and experienced generals.

In becoming a belligerent, the government of the United States consulted alone the respect she owed herself, and assumed an attitude demanded by her wrongs, her honor, and a regard to her permanent prosperity, which made war necessary to the accomplishment of a peace which should again restore upon an equitable basis, the long disturbed relations of amity and commerce. But among the events growing out of the late war, we cannot too much appreciate the elevation of the American character, and the pleasing contrast with periods anterior to its declaration. Remote from the collisions of Europe, her political influence in the scale of nations was scarcely felt; but the spirit with which she resisted the novel and unauthorized pretensions of disguised hostility, the firmness with which she maintained a sanguinary and perilous contest and the moderation she has shown, after the causes of the war had, by subsequent events, been essentially removed, in the arrangement of a peace, emanating principally from her valor and resources, have given her a rank in the conven-

tion of nations, which cannot fail effectually to guarantee the continuance of her pacific relations. Amidst these considerations, let not those who have achieved these great objects under the most adverse fortunes be forgotten. Let them not retire at once the objects of the respect and ingratitude of their country. I cannot but cherish the hope, that their sacrifices and their sufferings will early command the attention of the national legislature.

The decision with which the subsequent war with Algiers has been conducted, has given a new proof as well of the wisdom and firmness of those to whom the public functions of government have been entrusted as of the necessity of that description of maritime defence so peculiarly adapted to the commercial character of our country. In this achievement is to be found another instance of the high courage and conduct which on every occasion have distinguished the gallant commander of that portion of our naval force, and his brave associates.

In estimating the blessings of peace we cannot be too strongly reminded of the necessity of preparing for every vicissitude. Our growing commercial character, the jealousies excited by our free form of government, the recent brilliant achievements of our army and navy, our improvements both in the arts of peace and war; and our enterprise and resolution, render this country an object of inquietude and apprehension to those nations whose commercial pursuits and influence must unavoidably come in collision with those of the United States. I cannot therefore too strongly enforce on those who are selected as the guardians of the public safety, the indispensable necessity of providing against future and contingent danger, the means of prompt and vigorous resistance. To say that the general government is alone entrusted by the constitution with the power and means of providing for general defence, is to deny the application of those ordinary precautions which self respect and self defence im-

pose on each state. With it we participate equally in the responsibility of guarding and defending our territory, and with hers we ought to unite our efforts for a general defence.

I cannot pass over this occasion without again calling the attention of the legislature to the propriety of a new organization of the militia, a power competent from its resources to fulfill the high destination of being the bulwark of the state. Recent events have confirmed that opinion by practical illustration; when under competent commanders, the militia have been led through privation, fatigue and peril, to the accomplishment of many of the most important military operations. On former occasions, some of the defects of the existing militia laws have been presented to the legislature, and endeavors have been made to show that they are incompetent to the objects contemplated, and in time of war operate unequally. I cannot forbear remarking, that no period can be better adapted to a revision of our military code, than during the present tranquil state of the country. Our exposure to attack, and the difficulty of commanding our resources when assailed, present strong inducements for a co-operation with the United States in giving form and effect to that system of defence, which, in the opinions of the framers of the constitution,[a] was calculated for most of the emergencies of the nation.

The difficulties and expenses which attended the transportation of public stores to frontier posts during the late war, have demonstrated the necessity of a legislative intervention to encourage the establishment of good roads from the Hudson to the St. Lawrence, and to Lake Erie, Ontario; and Champlain; and on this subject allow me to remark, that neither the convenience of turnpike companies, nor the security of the public from imposition, are

[a] Const. 1777, § 40; U. S. Const. art. 1, § 8.

promoted by conferring upon the executive the power of appointing commissioners to lay out roads, inspectors to examine them, or of issuing licenses to erect gates. This power would be more advisedly reposed in the first judges of counties, or in some other responsible and accessible officers, with the right to appeal from their decision.

It will rest with the legislature, whether the prospect of connecting the waters of the Hudson with those of the western lakes and of Champlain, is not sufficiently important to demand the appropriation of some part of the revenues of the state to its accomplishment, without imposing too great a burthen upon our constituents. The first route being an object common with the states of the west, we may rely on their zealous co-operation in any judicious plan that can perfect the water communication in that direction. As it relates to the connecting the waters of the Hudson with those of Lake Champlain, we may with equal confidence count on the spirited exertions of the patriotic and enterprising state of Vermont.[1]

Among the objects that will necessarily invite the attention of the legislature, the situation of the manufacturing interests of the country ought not to be disregarded. The early effort they made to render their country independent of foreign supplies, not a little facilitated the operations of the late war. A neglect by government of their interests cannot but restrain, in the event of future hostilities, the direction that patriotism and enterprise would otherwise give to a great proportion of the capital of the country. It is a proposition too plain to require

[1] Chap. 237, passed April 17, "to provide for the improvement of the internal navigation of this State," appointed commissioners "to consider, devise, and adopt such measures as may or shall be requisite, to facilitate and effect the communication, by means of canals and locks, between the navigable waters of Hudson's River and Lake Erie, and the said navigable waters and Lake Champlain." The commissioners were authorized to apply to other states, and also to the United States for assistance in constructing the proposed canals.

any observation to enforce it, that no nation can be really and substantially independent, which relies on any other for its essential supplies of clothing. The maintenance of our manufactures is, in my view, of deep interest to the present and future prosperity of our country, and I confidently recommend them to your patronage and protection.[2]

In the course of last year, two persons convicted of arson have been pardoned, on the condition of submitting to imprisonment in the state prison for life, at hard labor.

As the constitution[b] invests the executive with the power of remitting sentences, for all crimes except treason and murder; and as the laws authorize the insertion of conditions in the pardons to be granted, I can entertain no doubt of the propriety, or expediency, in some cases, of commuting the punishment of death, for perpetual imprisonment by conditional pardons. This subject may, however, require some legislative provision in relation to the powers and duties of the inspectors and keepers of the state prison. The judges of the supreme court equally with myself, regret that the crowded state of the present prison, has of late made it indispensably necessary to extend the list of recommendations for pardons to a greater number than would otherwise have been deemed proper. They therefore suggest, in which I most respectfully concur, that the prison be enlarged, or that a new establishment be erected in the northern or western part of the state, which will have for one of its important effects, the reduction of a portion of the present heavy expenses incident to transportation of convicts from remote counties of the state.[3]

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[2] Chap. 58, passed March 29, continued until May 1, 1817, existing statutes providing for the creation of corporations for manufacturing purposes, and also authorized the formation of corporations for the manufacture of pins.

[b] Const. 1777, § 18.

[3] Chap 85, passed April 12, authorized the erection of a state prison in the village of Auburn, Cayuga county.

The evidence and documents on which I have respited, for the consideration of the legislature, the sentence of Thomas Burk, lately convicted of murder in New York, will accompany a special communication.[4]

Your superior wisdom, gentlemen, will suggest the variety of other subjects, which ought to receive the attention of the legislature. I have only therefore to add, that in the discharge of the important trust confided to us, to inculcate on our citizens the magnanimous sentiment, that in peace they should become the friends of those to whom they were enemies in war, to divest ourselves of that spirit of party which has heretofore jeopardized the best interests of the country, and which, if persisted in, may ultimately involve us in those deplorable scenes by which modern Europe has been convulsed and almost desolated; are duties of the highest obligation. In every object connected with those duties, or which may respect the honor or welfare of this state, you may be assured of the utmost support on my part.

DANIEL D. TOMPKINS.

Albany, February 2, 1816.

SPECIAL MESSAGES.

February 13. To the Assembly:

"GENTLEMEN.—A statement, by his honor Judge Platt, of the evidence adduced upon the trial of Thomas Burk, accompanies this message. As the recommendation by the jury, the affidavits of several credible persons, the petition of a very respectable portion of the inhabitants of the city of New York, and various other collateral representations, had an influence on my mind in respiting the sentence, those papers are also transmitted for the information of the Legislature. [See note 4.]

DANIEL D. TOMPKINS."

Albany, February 13, 1816.

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[4] Thomas Burk was pardoned by chap. 77, passed April 9.

February 15. To the Assembly: Transmitting the annual return of the inspector general of staves and heading.

February 22. To the Senate:

"GENTLEMEN.—At a treaty recently held with the Seneca nation of Indians, for the purchase of such of the islands in the Niagara river as may be within the territory of the United States, it was proposed by them to present to Jasper Parrish, Esq., their interpreter, as an acknowledgment of his many services to them, a small island called Squaw Island, containing by estimation one hundred and fifty acres. Being desirous of excluding from treaties, Indian grants or donations to individuals, I suggested the propriety of according with their wishes, by placing the proposed donation on the footing of a sale from the state to Mr. Parrish, at a specified price; which was acceded to on their part, and the sum of two dollars per acre mutually agreed as the price to be paid by him. In conformity with this collateral agreement, I gave to Mr. Parrish a certificate, of which a copy is subjoined, and do respectfully recommend the passage of a law complying with the said agreement, as fully as if it had been incorporated as an article of the treaty.[5]

DANIEL D. TOMPKINS."

Albany, February 21, 1816.

February 23. To the Senate: Announcing the death of Andrew King, a regent of the University.[6]

February 23. To the Assembly: Transmitting the annual return of the inspector of flour and meal in the city of New York.

[5] By chap. 63, passed April 5, the commissioners of the land office were directed to sell to Jasper Parrish, Squaw Island, in the Niagara river.

[6] Martin Van Buren was appointed regent in place of Andrew King, deceased.

February 24. To the Assembly:

"GENTLEMEN.—In compliance with the request of the Senate and Assembly, their resolutions of the seventh and eighteenth days of April last, have been presented to the brave and distinguished officers to whom they related; and I have the honor herewith to transmit copies of the communications which accompanied the resolutions, and of the answers of Major General Jackson and Commodore Patterson and Captain Reid.

DANIEL D. TOMPKINS."

Albany, February 24, 1816.

The following is the Assembly resolution which was concurred in by the Senate on the 7th of April, 1815:

"*Resolved, unanimously,* As the sense of this Legislature, that major general Andrew Jackson, and the gallant officers and soldiers under his command, for their noble defence of New Orleans, especially in the ever memorable conflict of the eighth of January last, do eminently deserve the unanimous applause of their country.

Resolved, unanimously, That the thanks of this Legislature be and they are hereby presented to major general Jackson, and the brave officers and soldiers under his command, for their heroic and glorious achievements.

Resolved, unanimously, That the thanks of this Legislature be and they are hereby presented to commodore Daniel T. Patterson, and the officers, seamen and marines under his command, for their gallant and skillful cooperation in repelling the invasion of that important part of our territory.

Resolved, unanimously, That these resolutions be signed by the President of the Senate and Speaker of the House of Assembly; That his Excellency the Governor be and he is hereby requested to transmit a copy of the same to major general Jackson and Commodore Patterson, who are also hereby requested to communicate to their brave associates in arms, the grateful sense which this Legislature entertain of their signal services, in such manner as they may deem consonant with the occasion."

Afterwards the Senate adopted the following resolution relative to Mr. Reid, which was concurred in by the Assembly on the 18th of April, 1815:

"*Resolved,* That the valor and heroism of our fellow citizen Samuel C. Reid, Esq. commander of the late private armed brig General Armstrong and the officers and crew under his command, in resisting the attacks of his Britannic Majesty's ships, the Plantagenet seventy-four, Rota frigate and Carnation sloop of war, in the neutral port of Fayal, command the admiration of the American people, and render proper an expression of commendation and applause by the representatives of this state.

Resolved, That the thanks of this Legislature be presented to Samuel C. Reid, the gallant officers and brave crew under his command, for their cool and intrepid valor, displayed in resisting the said attack, and thus gloriously maintaining the honor of the American flag, and valiantly avenging the violated rights of their country; and that his Excellency the Governor be requested to present the said Samuel C. Reid, Esquire, with a sword, in behalf of this Legislature as a testimonial of their gratitude."

The Governor was directed to transmit copies of the resolutions to the persons named therein. The following is the correspondence:

EXECUTIVE DEPARTMENT OF THE STATE OF NEW YORK,
ALBANY, *April* 21*st*, 1815.

SIR.—I am directed by the Legislature of this state, to transmit to you their unanimous resolution of thanks, for your gallant and glorious defence of New Orleans; and to request you to communicate to your brave associates in arms, the grateful sense which the Legislature entertains of their signal services.

I cannot, sir, sufficiently express my admiration of that firmness and distinguished conduct, which saved from the ravages of an excited soldiery, the capital of the district committed to your charge. In most of the incidents of the late war, we have perceived displays of the military pre-

tensions of our country; but this last achievement, both as respects the preparatory arrangements and the brilliancy of the victory, manifests most distinctly and emphatically how capable the American people are of the highest military results, when skilfully and courageously directed; and excites universal gratitude and applause.

Be pleased, sir, to receive the assurance of my exalted opinion of your talents and services, and of my high respect and esteem.

DANIEL D. TOMPKINS.

Major General ANDREW JACKSON.

GEORGETOWN, 18*th Nov.* 1815.

SIR.—The resolution of the Legislature of New York, which you were charged to transmit to me, expressive of their gratitude to myself and my brave associates in arms, for the preservation of New Orleans, was received in due time; but a multiplicity of business prevented me from acknowledging its receipt sooner.

For myself and my associates, I beg to return the most sincere thanks for the kind manner in which that respectable body has been pleased to speak of our exertions.

Undoubtedly those exertions were attended with very extraordinary success, but no more, I think, than we may always look for, when our cause is just, and Heaven is on our side. No people in the world are more capable than ours of the 'highest military results' when they fight for the dear inheritance of their independence, if a fair opportunity be afforded them, of displaying the qualities which really belong to them.

I have the honor to be, with great respect,

Your most obedient servant,

ANDREW JACKSON, Maj. Gen.

Commanding D. of the South.

His Excellency DANIEL D. TOMPKINS, New York.

NEW YORK, *May 17th*, 1815.

SIR.—The persevering zeal, the generous patriotism, and the undaunted courage displayed in the defence of New Orleans, claim universal admiration and gratitude. A struggle so unequal, yet so successful, with the best disciplined troops of Europe, forms an interesting epoch in our history, and will be recorded in its pages among the most brilliant achievements of the age.

The part which you have borne, sir, in this contest, by your skilful and gallant co-operation, offers another instance of that talent and heroism which have so eminently distinguished our naval commanders. Entertaining sentiments of high approbation, the representatives of this state have unanimously adopted resolutions expressive of their deep sense of your services, copies of which I have now the honor to transmit.

I pray leave to add, that my official duties seldom yield a pleasure equal to that which I derive from being the organ of feelings so much in unison with my own.

I have honor to be, respectfully,
Sir, your most obedient servant,
DANIEL D. TOMPKINS.

Commodore PATTERSON.

NEW ORLEANS, *July 7th*, 1815.

SIR.—I am honored with the receipt of your letter of the 17th May last, covering resolutions adopted by the Legislature of the state of New York, which, in conformity with the request thereto annnexed, I have, with infinite pleasure, communicated to the gallant officers, seamen and marines, whom I had the good fortune to command, on the occasion set forth in the resolves; and who, with myself, feel deeply impressed with the honor thus conferred by the Legislature of a state so highly important and respectable. To merit the approbation of our fellow citizens we are anxious, in receiving it we are richly rewarded.

To you, sir, I beg leave to tender my warmest acknowledgments for the very handsome manner in which you have done me the honor to convey the resolutions; to me more particularly gratifying, being a citizen of that state, which in the past troubles, stood conspicuous for the patriotism of its citizens, the wisdom of its legislature, and the talents of its executive.

I have the honor to be, with great respect,

Sir, your obedient servant,

DANIEL T. PATTERSON.

His Excellency DANIEL D. TOMPKINS,

Governor of the State of New York.

ALBANY, *April 24th*, 1815.

SIR.—The Legislature of the state of New York, animated with those emotions which are common to the whole American people, in regarding the extraordinary and noble defence of the privateer brig General Armstrong, of which you were commander, when she was assailed by a British squadron, in the neutral port of Fayal, have passed the resolutions I now have the honor to transmit to you. In contemplating that memorable defence, the mind is filled with a succession of brilliant incidents; and it hesitates which to admire most, the adventurous spirit which prompted you and your courageous comrades to engage in the desperate conflict, the consummate skill exhibited throughout the action, that undaunted valor which disdained to yield to the repeated efforts of an overwhelming force, or that proud magnanimous feeling displayed by your heroic band, in a self devotion of the flag and service of your country.

The defence of the General Armstrong ranks among the most glorious achievements of our late war, and justly

entitles the names of her valiant defenders to be inscribed on the roll of heroes whose deeds have shed lustre on the American republic.

Be assured, sir, that equally with the Legislature, and my fellow citizens of New York, I am deeply impressed with the splendor of your exploit, and pray you to make known to your brave officers and crew, our great admiration of their gallant conduct.

DANIEL D. TOMPKINS.

Capt. SAMUEL C. REID, Commander of
the late privateer Gen. Armstrong.

NEW YORK, *December 3d*, 1815.

To His Excellency Gov. TOMPKINS,

SIR.—In acknowledging the receipt of your Excellency's letter of the 24th April, enclosing the copy of a resolution 'passed by the honorable the Legislature of the State of New York,' complimentary to the officers and crew of the privateer brig General Armstrong, allow me, in behalf of those brave men, to make to that honorable body, the high respect they will ever feel for her warm and public notice of their conduct. To the uncommon gallantry of those attached to the General Armstrong, am I indebted for the signal defence at Fayal, nor can a higher testimonial be presented than the resolution of a state, whose distinguished devotion to the perils of the late war, may be remarked among the causes that led to an honorable peace. In receiving this recorded approbation of the conduct of myself, officers and crew, permit me to assure your Excellency of my personal esteem, and of the high satisfaction I shall take in communicating to them the resolutions of your Legislature.

With great respect and esteem,

I have the honor to be your obedient servant,

SAMUEL C. REID.

February 26. To the Senate: Transmitting resolutions from the following states relative to amendments to the federal constitution:

North Carolina, proposing that representatives in Congress and presidential electors be chosen by single districts, and that presidential electors have the right to fill vacancies in their number. Districts might be altered only after a federal census; also disapproving the Georgia proposition to reduce the term of United States senators from six years to four years, and the Massachusetts amendments set forth in the special message of February 24, 1815.

Massachusetts disapproved the North Carolina amendments, but proposed others of a similar import, omitting the provision in the North Carolina resolution prohibiting a change of districts unless there should be a change of representation from the State.

Vermont, disapproving the seven amendments proposed by Massachusetts as set forth in the special message of February 24, 1815.

March 4. Thanking the Assembly for its address.

March 5. To the Assembly:

"GENTLEMEN.—I have the honor to lay before you the annual report of the commissioners of fortifications. In addition to the sum required for the completion of the main work at the Narrows, an ultimate appropriation will be necessary to regulate the ground between that work and forts Richmond, Hudson, Morton, and Smith, so as to give the former the entire command of all the others, as contemplated by the original plan communicated to the Legislature in 1809; to purchase the site of fort Smith, for which the state has paid an annual rent of two hundred and fifty dollars, with such other adjacent ground as may be deemed indispensable, to make permanent fences to enclose the public ground, and to erect the out buildings appurtenant

to an establishment so extensive and important. I therefore beg leave respectfully to recommend the appropriation as well of fifty thousand dollars for the purpose specified in the report of the commissioners, as of the further sum of twenty-five thousand dollars for the general objects before mentioned.[7]

By the tenth section of the act, entitled 'an act further to provide for the defence of the frontiers, and for other purposes,' passed June 12, 1812, an authority is given to raise and employ a guard for the occupation and protection of the fortifications erected by the state. Soon after the close of the late war, the regular troops were temporarily withdrawn from fort Richmond, which rendered the organization of a state guard necessary. An officer was accordingly appointed to enlist and command it. But the return shortly afterwards of a small detachment of regulars superseded the necessity of putting the state to further expense at that time. A guard of some description will, however, soon become necessary.

The pay allowed to the officers, non-commissioned officers and privates of the guard, by the act above mentioned, is nearly adequate to compensate scientific military men for superintendence of, and youths, to be selected from each county in the state, for service in, a military academy. I have endeavored, on a former occasion, to draw the attention of the Legislature to the importance of such an institution, and regard this as a suitable occasion to suggest the propriety of legal provision for forming the guard already provided for, into a corps of cadets, with such officers and teachers attached to it, and with such regulations, as will promote military science and discipline, by forming a nursery for intelligent and accomplished militia officers; which, while it will not materially enhance the

[7] L. 1818, chap. 4, authorized the Governor to negotiate with the federal government for the sale to the latter of the fortifications on Staten Island.

expense, will afford greater security to the fortifications, equipments, and public property, from depredation and waste, than a guard composed of an equal number of enlisted soldiers.

DANIEL D. TOMPKINS."

Albany, March 5, 1816.

March 7. Thanking the Senate for its address.

March 13. To the Assembly: Transmitting the report to the commissary of military stores.

March 18. To the Senate: Transmitting resolutions adopted by the legislature of Rhode Island disapproving the North Carolina and Massachusetts propositions relative to the election of representatives in Congress and presidential electors.

March 18. To the Senate:

"GENTLEMEN.—Having made purchases from the Seneca nation of Indians, of such of the islands in the Niagara river, as are within the territorial limits of this state, and from the St. Regis Indians, their mile square at French Mills, in the county of Franklin, with five thousand acres of their reservation, adjoining the mile square, I herewith transmit copies of the treaties, for the information of the legislature.[8]

DANIEL D. TOMPKINS."

Albany, March 18, 1816.

The Senate journal contains the treaty.

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[8] Chap. 171, passed April 17, 1816, authorized the Governor to purchase the mile square at French Mills, and other lands owned by the St. Regis Indians, in the State, and extinguish the title thereto.

March 18. To the Assembly:

"GENTLEMEN.—In compliance with a resolution of the honorable the Assembly, I have the honor to report to them, that Samuel Young, of Saratoga County, John Savage of Washington county, and John B. Prevost, of the city of New York, are the commissioners appointed to investigate the claim of John J. Astor, to certain lands in the county of Putnam. They have not yet made a report on the subject of their appointment.

No suit having been commenced by the claimant, there has been no counsel employed on the part of the state.

DANIEL D. TOMPKINS."

Albany, March 18, 1816.

March 27. To the Assembly:

"GENTLEMEN.—In discharge of the duty enjoined by the third section of the act authorizing the comptroller to loan to the general government a sum of money sufficient to pay off the militia of this state who had been ordered into the service of the United States, application has been made to the proper department for the payment of all such expenditures by this state, during the late war, as might be justly chargeable to the United States.

The want of competent authority on the part of the officers of the general government has hitherto delayed the arrangement contemplated by the beforementioned section.

A bill to authorize the payment of the expense of militia ordered into state service, and the additional five dollars per month allowed by the state to Porter's volunteers, is now pending before Congress, which it is confidently expected will become a law before the close of the present Congressional session.

The Legislature may rest assured of a prompt compliance on my part with the duty imposed by law, the moment

I learn that any officer or department of the United States is empowered to negotiate upon the subject.

The annexed extract of a communication from the secretary of the war department, as well in relation to the preceding subject, as to an adjustment of the account of munitions delivered by, and to the United States, and state of New York, respectively, is respectfully submitted.

It has, however, been out of my power to complete that adjustment to the extent to which the secretary is authorized to make it, because the vouchers for issues of arms, and other munitions, in the western district, were in the possession of the deceased assistant commissaries of said district; and I have not yet received from the commissaries department the requisite information in relation to the issues in that district to enable me to comply with the requisition of the fourth section of the act before mentioned.

DANIEL D. TOMPKINS."

Albany, March 27, 1816.

The following is the extract of a letter from the Secretary of War referred to in the message:

"SIR.—Your letter has been received and submitted to the consideration of the President who has directed me to inform your Excellency, that the arms and equipments furnished by the state of New York to volunteer militia, who by law ought to have been armed by the United States, and were, on obtaining a certificate of faithful service, entitled to retain them, will be restored to the state by this department.

A fit and discreet person will be appointed for the purpose of ascertaining whether any of the state arms have been received into the arsenals and depots of the United States. Such as may be found will be restored to the state upon the restoration of the arms of the United States which may have been received into the state arsenals.

The other objects embraced in the letter of your Ex-

cellency are not considered within the power of this department. The arms and munitions of war which may have been lost in action, or in the forts and arsenals of the United States, may form a charge against the nation, but cannot be recognized by the executive authority without the direct authority of the Legislature; the same observation will apply to the claim of the additional pay granted by the state to her militia when in the public service.

I have the honor to be, &c.

WM. H. CRAWFORD.

His Excellency DANIEL D. TOMPKINS,
Governor of the state of New York.

April 4. To the Senate: Transmitting the annual return of the militia.

April 4. To the Assembly:

"GENTLEMEN.—In obedience to the direction of the honorable the Assembly, I have the honor to represent to them, that as the principal part of the militia of this state, who were in actual service during the late war, were in the service and pay of the general government, the returns of the killed and wounded, if any were made, were transmitted to the war department of the United States. The officers who commanded the militia in the service and pay of the state, except Major General Mooers, of the third division of infantry, have neglected to make to me, or the adjutant general, regular returns of the killed and wounded of their respective commands. The report by Major General Mooers, of killed and wounded of his division, is herewith transmitted, and is the only list I am able, at this time, to communicate to the honorable the Assembly.

A minute examination of the muster rolls of the respective corps, on file in the office of the war department,

and of the comptroller of this state, will probably furnish all the information contemplated by the resolution of the Assembly of the thirtieth of March last.

I avail myself of this opportunity to convey the annual return of the militia of this state.

DANIEL D. TOMPKINS."

Albany, April 4, 1816.

General Mooers reported that of his division 7 had been killed and 12 wounded.

April 5. To the Senate: Transmitting resolutions adopted by the Legislature of Ohio disapproving the North Carolina resolution in relation to the election of representatives in Congress and presidential electors, and also the Georgia resolution relative to the official term of United States senators.

April 5. To the Assembly:

ALBANY, *April 5th*, 1816.

"GENTLEMEN.—The interests of the state require that authority be given to the commissary's department, to sell all articles of a perishable nature, which were purchased during the emergency of the late war, and which are in the arsenals or belong to the state.

I would also pray leave to remark, that this city being the distributing point for the frontiers, a convenient and extensive arsenal is much wanted here, and as the surveyor general has not been able to dispose of the arsenal lots in the Colonie to advantage, I would beg leave to suggest for the consideration of the Legislature, the propriety of making an appropriation from the treasury, of twenty-five thousand dollars, for the purchase of a site, and the erection thereon of a suitable building for an arsenal, in the

neighborhood of this city, and that the proceeds of the old arsenal and the lots appurtenant thereto, be paid into the treasury whenever an advantageous sale of them can be made.[9]

DANIEL D. TOMPKINS."

April 6. To the Senate:

Objections by the Council of Revision to a bill "to incorporate the bank of Niagara."[10]

"Because the bill is destitute of due and adequate provision to secure the punctual payment, upon demand, of the notes of the bank, in lawful monies of the United States. It is a fact of public notoriety, that the several incorporated banks within this state have, for some time past, refused to redeem their bills, by paying the same in specie; and as this refusal has existed for upwards of a year past, though the country has in that time been in a state of peace, the evil grows more inveterate and alarming by the continuance of such refusal. This is the first instance of a bill for the erection of a new bank, since the existing banks have discontinued specie payments, and the occasion seems to require some new and effectual provision, beyond the mere increase of interest, to guard against the repetition of an evil not anticipated when the existing banks were incorporated. And it appears to the Council, to be repugnant to the dictates of sound policy, to institute, under the present state of things, any new bank, unless the charter thereof contain some express and decided sense of the Legislature, that the duty must be deemed indispensable to pay their notes on demand, in monies that are, or shall be, a tender by law. And if the duty be indispensable, the privilege of

[9] Chap. 93, passed April 12, repealed that portion of the act of 1815, directing the sale of the Albany arsenal, and authorized the commissary-general to lease it.

[10] The Niagara Bank bill was not passed over the veto, but an act on the same subject was passed, and became a law, chap. 167, on the 17th of April.

issuing notes ought to be made to rest as a condition upon the performance of that duty, and to cease when the condition is not fulfilled."

April 15. To the Assembly:

ALBANY, *April* 15, 1816.

"GENTLEMEN.—Having obtained from Mr. Edmunds, paymaster of militia, a list of killed and wounded of the militia and volunteers, at Black Rock and Buffalo, on the thirteenth [30th] of December, 1813, I beg that it may be received as a supplement to the list which I had the honor to communicate to the Assembly on the fourth instant.

DANIEL D. TOMPKINS."

According to this report 35 were killed and 26 wounded.

April 17. The Legislature adjourned without day.

1816. NOVEMBER. LEGISLATURE, FORTIETH SESSION.

DANIEL D. TOMPKINS, Governor.

FIRST MEETING.

The Legislature met on the 5th of November, at which time the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—I avail myself of the present occasion to express to the people through their representatives, my acknowledgments for the renewed honor conferred on me by committing once more to my charge, the administration of their government.

The general state of peace in which mankind at length repose, is a subject of high felicitation. Europe, hitherto the theatre of perpetual and bloody contention, now presents a spectacle of nations at amity, rivalling each other only in quiet industry, commercial enterprise and all the means of repairing the ravages caused by their long and cruel wars.

The southern part of our own continent is the principal exception to universal peace. There we behold a vast population, inhabiting a boundless extent of fertile territory, struggling to dispel the clouds of superstition, and to shake off the chains of foreign despotism. An effort so noble challenges the best wishes of the philanthropist, and cannot fail to receive the sympathy of the citizens of the United States; and, if in the dispensations of Providence, it shall be decreed that our southern brethren may terminate their political sufferings in the establishment of a great confederacy of republics, mutually cultivating the arts and sciences, conducting extensive and liberal commerce, promoting agriculture, becoming respectable and happy at home and honored abroad, and dispensing all the blessings of political and religious freedom, this western hemisphere will present a scene of delightful contemplation.

Within our own borders everything is tranquil and happy; and although some of the productions of the earth have not been so abundant the past season as they usually are, a bountiful store, fully sufficient, with prudent foresight, to supply all the necessaries and comforts of life, is still left us. This and the general healthfulness of the season, call forth warm emotions of gratitude to the great dispenser of every good.

The present meeting of the legislature being appointed by law for a special purpose, I shall submit to your con-

sideration at this time, such subjects only as are of pressing and indispensable importance.

In the month of September last, Daniel Northrop, of the county of Saratoga, was convicted of the crime of murder, and was sentenced to be executed on the last Friday of the present month. The jurors who tried him have requested that his punishment may be commuted; but the Chief Justice, who presided at the trial, is so well persuaded of the mental derangement of the unfortunate convict, that he does not think him a fit subject for punishment of any kind. It is, however, considered dangerous to permit him to go at large; and therefore, if a pardon be granted, a condition that he be confined in some lunatic hospital or asylum is respectfully recommended.[1]

The progress of vice keeping pace with the rapid increase of population, it becomes impossible to accommodate in the single edifice at New York all the convicts which are sent from the different parts of the state. So crowded indeed is that prison that serious apprehensions are entertained of infection, and other alarming consequences. For this reason many pardons are recommended by the judges of the supreme court, and the inspectors of the prison, on the plea of necessity, which perhaps would not have been advised on the ground of merit. This necessity renders punishments more uncertain, and that uncertainty destroys the respect for, and operation of the laws, and as the grand melioration of our criminal code, which substitutes deprivation of liberty and subjection to hard labor for sanguinary and capital punishments, will not have a fair ex-

[1] By chap. 4, passed November 12, 1816, the execution of Northrup's sentence was suspended until the first of the following March, and he was ultimately to be pardoned if in the meantime his friends made satisfactory arrangements for his care in a lunatic asylum. An absolute pardon was granted to Northrup by chap. 107, passed March 21, 1817.

periment, or be truly tested, unless the mild sentences pronounced are endured, you will readily perceive the high importance of removing the present embarrassments to the full execution of criminal sentences. The communication from the inspectors of the institution, which I now present, suggests several remedies for the existing evil. Without expressing an opinion on the propriety of ultimately adopting those which are experimental, and will be more difficult and tedious of accomplishment, it is respectfully submitted to your wisdom to make provision at the present session for employing a part, at least, of the state prisoners either in building the new prison at Auburn, erecting fortifications, opening and repairing great roads, constructing canals, or in making other improvements.[2]

It is greatly to be deplored when capitalists had, from

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[2] Chap. 15, passed November 12, 1816, authorized the state prison inspectors, in conjunction with the authorities of New York, to employ convicts upon any of the public avenues, roads, streets or other works in the said city, and the inspectors were also authorized to cause other convicts to be employed on public works in the counties of Richmond and Kings. Convicts suffering from infectious diseases were to be removed from the prison to some other place for treatment, and returned upon their recovery.

Chap. 269, passed April 15, 1817, required prisoners in the New York prison to be supplied with provisions and hospital stores by contract. After the last day of October, 1817, convicts were not to work on state account, but were to be employed on materials which might be brought to the prison by outsiders for that purpose, at a fixed price for their labor, the proceeds to be paid to the agent of the prison for the use of the state. A separate account was to be kept with each prisoner, and he was to be charged with the cost of clothing, provisions and hospital expenses, and allowed credit for what had been earned by him. For good behavior a prisoner was entitled to have twenty per cent. of the balance set apart for his benefit. Also for good behavior the inspectors were authorized to allow a commutation of the sentence, equal to one-fourth of the entire term of imprisonment. The canal commissioners were authorized to contract for the labor of prisoners in constructing the Erie canal. If the number of convicts in the state prison should exceed 450, the Governor was authorized to provide for their employment according to his discretion.

the purest motives of patriotism, and when the best interests of the country required it, adventured their property in them, that establishments for domestic manufactures should have been suffered to be suspended or even to languish. An appeal to the general government has produced partial relief; but the utmost exertions of the state legislature will be required to yield such further encouragement as will place manufacturers of domestic articles, upon an equal footing with the importers of foreign merchandise.[3]

GENTLEMEN.— When we compare the situation of the United States with that of other countries, we have great cause of self gratulation. We find ourselves in the enjoyment of every rational right, civil and religious. Our government has proved itself capable of resisting the shock of most political changes which peace or war can produce. Its duration then, may confidently be predicted, coeval with the intelligence and virtue of its inhabitants.

The present state of the world, and the general disposition of mankind are propitious to the encouragement of learning, the advancement of the arts, and the extension of religious information, the certain and only means of perpetuating our happy condition. As guardians of the prosperity, liberty and morals of the state, we are therefore, bound by every injunction of patriotism and wisdom, to endow to the utmost of our resources, schools and seminaries of learning, to patronize public improvements and to

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[3] By chap. 64, passed February 28, "for the encouragement of manufactures," all buildings, machinery and the manufactured articles in the hands of the manufacturer of every cotton, woolen or linen manufactory erected within this State or hereafter to be erected, were to be exempted from taxation, and all persons engaged in any such business were to be exempt from militia duty except in cases of invasion or insurrection, and also from jury duty in actions not involving more than $25. Chap. 240, passed April 15, revived certain sections of an act passed June 19, 1812, relative to the manufacture of woolen cloth.

cherish all institutions for the diffusion of religious knowledge and for the promotion of virtue and piety.[4]

DANIEL D. TOMPKINS.

Albany, November 5, 1816.

SPECIAL MESSAGES.

November 8. To the Assembly:

"GENTLEMEN.—I have the honor to transmit a copy of a communication from Lieut. Col. Totten, of the corps of engineers. It is of high importance to the safety of the northern frontier of this state, that the works contemplated at Rouse's Point, in the county of Clinton, be erected. This will not probably be done by the United States until the title for the requisite site can be obtained. It is therefore respectfully suggested that the interest of this state, if any, in the island opposite Rouse's Point, be released to the United States; and that the provisions of the acts passed March 18, 1808, and April 13, 1813, be extended to lands required by the United States for fortifications and other military purposes on the northern and western frontiers of this state.

It was found by the commissioners of fortifications, after the last session of the Legislature, that great waste and destruction would probably be made by the weather in the works erecting by the state, unless the lower bastion were carried up to its height and coped before the ensuing winter. No appropriation for that purpose having been made the last year, I did, with their unanimous advice, procure funds for that purpose, and the tower has been already raised and covered from the weather.

The subject is, therefore, respectfully submitted to the legislature, in the hope of its receiving their approbation

[4] Several private schools were incorporated at this session. Chap. 89, regulated the election of trustees of academies; chap. 124, related to the American Academy of Fine Arts in New York; and chap. 145, amended the New York city free school law.

and sanction. The amount requisite to cover the expenditures of this year is sixteen thousand dollars.[5]

The Commissary General has reported, that the roof of the arsenal in the city of Albany is out of repair, and that the rain passes through it to such a degree as to be very injurious to the public property stored in it. The peculiar plan and manner of building this arsenal at first, was unfavorable to its permanency and convenience; and the sums which have from time to time been expended in repairing and strengthening it, are very considerable. I therefore feel it my duty, respectfully to renew the suggestion contained in my several messages to the honorable the Assembly of the 5th April last, and to the honorable the Senate of the twenty-seventh day of February, 1815.

DANIEL D. TOMPKINS."

Albany, November 8, 1816.

The following is Lieutenant Colonel Totten's letter:

PLATTSBURGH, *October* 29, 1816.

His Excellency Gov. TOMPKINS.

SIR.—In the spring of 1815, I was ordered to report on the expediency of fortifying Rouse's Point to command the entrance to Lake Champlain. I reported favorably; and early this year, was informed, through Brigadier General J. G. Swift, of engineers, that the government had appointed me to execute works with that design, and to make all disbursements. This I state to inform your Excellency as to the relation of my appointment with the request I

[5] Chap. 16, passed November 12, 1816, extended to the northern and western frontiers the provisions of the acts of 1807 and 1808, relative to certain cessions to the United States, and also the act of 1813 relative to the ascertainment of damages. The act also specifically included the island in Lake Champlain opposite Rouse's Point, and certain lots in the Refugee tract. The same act appropriated $16,000 for completing the bastion at the fortifications around the harbor of New York. An additional cession of land was made at the next session, 1818, by chap. 288.

am about to make. The commencement of the work was postponed by an order from the war department. In the meantime the probability of the establishment of considerable works in that neighborhood was rumored, and the owners of the sites and of the vicinity put at once a most exorbitant price upon their land. The position selected for the principal water battery was found to belong, in all probability, to the State of New York; but the site of the work which is to secure the water battery from assault, and to sustain the command of the lake against a powerful besieging force, is beyond question the property of individuals.

The request I beg leave to make of your Excellency, is, that you will aid in the accomplishment of the designs of the general government, in this particular, by recommending to the Legislature the enacting a law which will be the means of securing the title of the land wanted, to the government, for a just compensation. You will, I hope, forgive me for referring to a law of like tenor, passed March 18, 1808.

It is indispensable in large fortifications, that the environs within five or six hundred yards be completely within view of the guns. It is therefore necessary, that the land at least within that distance be public property. It is for this reason principally that I recommend that the seven lots of the Refugee tract, viz. No. 60, 61, 62, 63, 64, 65, 66, lying next the line dividing the United States from Canada, be included in the purchase. I have requested the opinion of the Attorney General of this state as to the title of the position, (generally an island) of the water battery, and as I have lately received orders to begin, and have actually commenced the foundation, I beg your Excellency will recommend some general provision to meet the event of its being determined either state or individual property.

I shall write immediately to the Secretary of War, and enclose to him a copy of this letter. My appointment, it

appears to me, imposes as a duty the business I have here undertaken, but I may have been precipitate; in which case the President can have you informed of his wish, and thereby arrest the progress of any useless or troublesome measure.

I have the honor to be,
With great respect, &c.
JOS. G. TOTTEN,
Capt. Engineers, Brevet Lt. Col.

His Excellency DANIEL D. TOMPKINS,
Governor of the State of New York.

November 11 and 12. Thanking the Assembly and Senate respectively for their addresses.

November 12. The Legislature adjourned to meet the second Tuesday of January, 1817.

1817. JANUARY.

SECOND MEETING.

The Legislature met January 14.

SPECIAL MESSAGES.

January 28. To the Legislature:

"GENTLEMEN.—In my last public communication to the legislature, I had the honor to advert to the present happy condition of our country, and to intimate, that the existing state of society, and the general disposition of mankind, seemed propitious to the promotion of the interests of literature, religion, freedom and humanity.

I will now take the liberty of submitting to the legislature, whether the dictates of humanity, the reputation of the state, and a just sense of gratitude to the Almighty

for the many favors he has conferred on us as a nation, do not demand that the reproach of slavery be expunged from our statute book.

'No people can be bound to acknowledge and adore the Invisible Hand which conducts the affairs of men, more than the people of the United States. Every step by which they have advanced to the character of an independent nation, seems to have been distinguished by some token of providential agency.'

The same divine munificence which called forth this effusion of gratitude from the Father of his Country, twenty-seven years ago, has been equally, if not more conspicuous, in every subsequent stage of our advancement in prosperity and renown. What more acceptable return can a grateful and enlightened people make to the heavenly Donor of these so great benefits, than by emancipating from bitter servitude, that portion of his creatures which still continue to be held in unjust and cruel bondage, by civilized and independent freemen?

I do, therefore, respectfully, but earnestly, recommend to the legislature, to establish some future day, not more remote than the fourth day of July, 1827, on which slavery shall cease within this state. Before the arrival of that period, most colored persons born previously to the 4th of July, 1799, (and all others are now free by the existing laws,) will have become of very little value to their owners. Indeed, many of them will by that time have become an expensive burden.

To fix a day thus remote for general emancipation, will consequently impair in a very small degree any private right, and will, at the same time, be consistent with the humanity and justice of a free and prosperous people.[6]

DANIEL D. TOMPKINS."

Albany, 28th January, 1817.

[6] The Legislature adopted the Governor's recommendation as to the abolition of slavery, and by chap. 137, passed March 31, 1817, enacted various

January 30. To the Assembly: Transmitting the annual return of the commissary of military stores.

January 31. To the Assembly: Transmitting a resolution adopted by the General Assembly of North Carolina, approving the Massachusetts proposition relative to the election of representatives in Congress and presidential electors by districts. See special message of February 26, 1816.

January 31. To the Assembly: Transmitting the report of the inspector general of staves and heading.

January 31. To the Assembly:

"GENTLEMEN.—The St. Regis, Oneida, Onondaga and Seneca Indians, are in much distress on account of the destruction of their corn the last season, and of the general scarcity of the other usual means of their support for the winter. I therefore respectfully submit to the consideration of the legislature, the propriety of authorizing the agent for Indian affairs, with the approbation of the comptroller, to anticipate a part of the annuities which will be payable to those tribes in August next, and to apply such part in providing for them the necessaries of life, this winter, and to deduct the sum so applied, from their annuities, payable the ensuing summer.[7]

DANIEL D. TOMPKINS."

Albany, January 31, 1817.

February 20. To the Senate:

"GENTLEMEN.—In pursuance of the authority given by certain concurrent resolutions, and by an act of the legis-

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regulations intended to provide for gradual emancipation. The act contained the express declaration that "every negro, mulatto or mustee within this State, born before the fourth day of July, 1799, shall, from and after the fourth day of July, 1827, be free."

[7] Relief was granted by chap. 34, passed February 12, 1817, which authorized advancements to be made from the Indian annuities to provide the necessaries of life to Indians demanding the same, the expenditures to be made under the Governor's direction.

lature, measures have been taken to investigate the title of George Clark, to certain lands in this state. In the course of which Mr. Clark requested me to advance for the state, fees or compensation to his counsel, as well as to those employed by me in behalf of the state; and founded his request upon the concurrent resolutions before mentioned. I declined to comply with this request, because I did not suppose that the resolutions admitted of such construction, but promised him at the same time, to submit the subject to the consideration of the legislature.

DANIEL D. TOMPKINS."

These resolutions were adopted in 1812, and the appropriation act of 1815, chapter 266, provided for the expenses of the investigation.

February 22. To the Senate: Transmitting the report of the commissioners of fortifications, with an approval of their recommendations.

GOVERNOR TOMPKINS RESIGNS.

February 24. To the Legislature:

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY OF THE STATE OF NEW YORK.— Having received official information of my election to the office of Vice-President of the United States, I surrender, through their representatives, to the people of this State, the office of their chief magistrate.

Whether the influence of my official conduct, on the prosperity, the security, and the character of New York, may be regarded in a favorable or an unfavorable light, I shall always hear with the highest gratification, that those who may succeed to the administration of its government shall have far exceeded me in advancing the interests and the honor of the State.

A crowd of sensations are awakened by announcing this my separation from officers, legislators and citizens, with

whom I have been so long associated, and who have yielded to me, on all occasions, the greatest kindness, assistance and respect.

When I call to mind that I was distinguished at an early age by a preference far beyond my merits, and reflect on the violent party collisions, with which this State has been, unfortunately, too often agitated during my administration; when I recollect the national difficulties and distress occasioned by the war in which we have been engaged, and call to mind the unbounded confidence, support, and indeed, parental solicitude, with which they sustained me in the midst of those most trying scenes of my public life, and at the same time reflect how inadequate and feeble have been my greatest exertions, and my utmost devotion to their interests, to repay the obligation, my heart is overwhelmed with emotions which I have no power to express.

I shall bear with me through life a glowing recollection of the affection and gratitude I owe to the people of the state of New York; and that they may be blessed with perpetual happiness, prosperity and liberty, will ever be the warmest wish of my heart.

DANIEL D. TOMPKINS."

Albany, February 24th, 1817.

On the 25th of March the Assembly unanimously adopted the following address to Governor Tompkins:

To His Excellency DANIEL D. TOMPKINS.

SIR.— With feelings of sincere regret we have received your excellency's communication, announcing your resignation of the chief magistracy of this state. The period during which you have administered its government, has been marked by events of a highly interesting nature. Advanced to this responsible station, at a time when prosperity and peace prevailed within our limits, your administration promised an opportunity of cultivating those arts and improvements which are alike the convenience, the ornament, and the pride of a nation.

Removed from the European continent, it was hoped that our distance, and the pacific habits we indulged and manifested, would preserve us from those violent agitations which have convulsed the old world — exhausting its wealth and desolating its inhabitants. You had scarcely however assumed the reins of government, when the injustice of foreign powers, so affected our national rights, as to produce a course of commercial suffering and restriction which eventually terminated in war. It has therefore been your lot to preside over this state during a period of great difficulty and embarrassment, when with a diminished revenue and impoverished resources, it was called on to sustain all the hardships and privations of war. Your patriotic devotion to the best interest of your country, during this arduous contest — the zeal you manifested — the spirit you infused — and the energies which you roused into action — while they commanded the applause of our sister states, will ever endear you to those who were the immediate witnesses of your attachment, your ardor and your enterprise. Through your instrumentality, the extremes of the state, which were equally threatened with assailment, were placed in a situation capable of repelling the approaches of an invader. Those borders which, during our revolutionary struggle, were the seat of merciless warfare, and which were again exposed to similar devastations, were rendered, through your early solicitude, not only able to sustain the pressure of an enemy, but to retaliate upon him the ravages he might venture to perpetrate. From points of weakness they were converted into places of strength, and became the seats of splendid heroism and exalted achievement.

Whether employed in the establishment of useful institutions, in fostering the liberal views of science, or providing the resources of war, we behold you the faithful guardian of the best interests of the state. After a period, therefore, of ten years, engaged actively in its service, in your present separation from its immediate concerns, you bear with you the warm attachment and the best wishes of its inhabitants. In their behalf we reciprocate the sentiments of regard which your excellency has so feelingly expressed; and while promoted to a sphere of more extensive usefulness, may you, by an equal devotion to the general

weal, secure to yourself the best recompense of public services — the approbation of your own heart, and the lasting affection of our country."

On the 15th of April, the Senate addressed Governor Tompkins as follows:

"The Senate, with impressive regret, accept the surrender of that dignified office, which, as Chief Magistrate, you have so long filled with consummate reputation to yourself, and distinguished honor to our state.

In the discharge of the public trusts reposed in you, we with pleasure review, and with pride recognize, your administration, founded upon principles of justice, directed by inflexible patriotism, and actively embracing the happiness, the prosperity, and the rights of citizens, founded upon constitutional principles of public liberty.

The Senate, with emotions not rivalled by your own, lament your separation from your native state; but they derive great consolation from the reflection, that your virtues and talents, though transferred to the interests of the union, will always have for their object the honor and prosperity of our common country.

The Senate, in bidding you a friendly and affectionate farewell, wish you every blessing that the domestic mansion can embrace, always interested in your public fame."

John Taylor.

SECOND MEETING — CONTINUED.

JOHN TAYLER, Lieutenant-Governor.

Governor Tompkins resigned on the 24th of February, 1817, in consequence of his election as Vice-President of the United States. The Constitution (1777, art. 20) provided that in case of the Governor's resignation the "Lieutenant-Governor shall exercise all the power and authority appertaining to the office of Governor, until another be chosen." Governor Tompkins was succeeded by the Lieutenant-Governor, John Tayler, who thereupon became Acting Governor.

Acting on a suggestion contained in Governor Tompkins' letter of resignation, the Legislature passed an act, chap. 74, on the 10th of March, providing for the election of a Governor and Lieutenant-Governor on the last Tuesday of April. At this election De Witt Clinton was elected Governor, and assumed the duties of the office on the 1st of July. Mr. Tayler was again elected Lieutenant-Governor. He was Acting Governor from the date of Governor Tompkins' resignation until the beginning of Governor Clinton's term. Mr. Tayler did not take an oath of office as Governor. He is described as Lieutenant-Governor in the Senate and Assembly journals, and also in the records of the Council of Revision and of the Council of Appointment.

February 26. John Tayler, Lieutenant-Governor and acting Governor, transmitted to the Senate the annual report of the inspectors of flour and meal for the city and county of New York.

February 26. To the Senate:

"GENTLEMEN.—At a treaty held with the Onondaga tribe of Indians, they ceded to the state upwards of four

thousand acres of the reservation on which they reside; as the land is covered with wood, which hitherto has been preserved by the attention of the Indians, and in a neighborhood where that article has become valuable, and in danger of being destroyed, permit me to suggest the propriety of making provision to prevent trespasses or innovations thereon.[8]

JOHN TAYLER."

Albany, 26th Feb. 1817.

March 6. To the Senate: Transmitting the following communication from the District Attorney of the United States at New York:

NEW YORK, 1*st March*, 1817.

SIR.—I have this day received from the department of state a letter, stating that it appears by a representation of the British consul general to the British minister, and by the latter communicated to that department, that the wardens and pilots of the port of New York exact alien charges for the pilotage of British vessels into this port, notwithstanding the stipulation of the commercial convention of the 3d July, 1815, which places the vessels of the two nations entering the ports of each other, upon the same footing, and the decisions of one of the courts of this state in this city, in three several actions against the wardens in the matters referred to.

As it is very desirable that full effect should be given to the engagements of the United States, I have been requested to co-operate with the proper law officer of the state of New York, in such way and before such tribunals as

[8] Chap. 110, passed March 28, provided for the survey and sale of the Onondaga lands, and authorized the Governor to appoint an agent or attorney to reside near the land and prosecute for all trespasses thereon.

may be considered most eligible towards removing the obstructions to the execution of the convention referred to, in the instance particularly noticed and complained of by the British consul-general.

I presume these charges have been exacted pursuant to what was believed to be the law of this state — allowing to the wardens and pilots additional fees for services rendered to foreign vessels, and considerably more than what is allowed for similar services rendered to American vessels; and notwithstanding the stipulation of the convention, may, by the judicial tribunals, as often as the question may arise before them, be considered and declared the paramount law — yet the wardens and pilots acting immediately under the authority and laws of this state, may feel themselves at liberty to exact the charges complained of, whilst there exists an express provision in the laws of this state to be urged in justification of such charges, and thus, occasion be offered for renewed complaints and increased litigation.

Knowing how scrupulous the legislature of New York have ever been, that the statutes of this state should not contain a provision or an expression which might be deemed to conflict with the laws of the United States, I have believed that the most eligible, because the most effectual effort in my power to offer, towards obviating a difficulty which may, possibly, in some degree, be attributed to the existing statutes of this state, would be to submit the matter to the executive. If the executive should deem the subject of sufficient public interest and importance to invite to it the attention of the honorable the legislature, now in session, all ground of embarrassment and complaint may be at once removed, by modifying the statute regulating the fees and charges of the wardens and pilots

of the port so far as to render such charges conformable to the stipulation of the convention.[9]

I have the honor to be, Sir,
With great respect and consideration,
Your most obedient servant,
JONA. FISK.

His Honor JOHN TAYLER,
Governor of the State of New York.

March 13. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

March 15. To the Senate: Transmitting the following communication from Lt. Col. Totten:

PLATTSBURGH, *March* 4, 1817.

His Excellency Gov. TAYLER,

SIR.—During the last November session, I requested, on behalf of the United States, as agent for fortifications on lake Champlain, the aid of the government of this state in procuring the title to certain lots of land, containing the sites I had selected for some permanent defences. The subject was laid before the Legislature, by Governor Tompkins, and a law was passed providing for an equitable valuation and an easy transfer; the law, however, has not, as respects the quantity of land, the extent which was required or which is necessary; two lots, which will be found in my enumeration, in the letter I had the honor to write the Governor, are omitted; and those two lots contain the site for a collateral work of great importance in the projected scheme of defence. I should not presume to address you on this subject, if I did not believe, from the readiness with which the honorable Legislature acted, that they were omitted by mistake. I have to beg of your

[9] By chap. 198, passed April 11, pilots were prohibited from collecting from British subjects any greater fees than were collected from citizens of the United States.

Excellency, therefore, your assistance in procuring such an amendment of the law, as will extend its operation to all the lots enumerated in that letter; and, in case of the success of this application, as prompt a proceeding, in procuring and transferring the title as will suit your convenience. It is proper to add, that in a late interview with the acting Secretary of War, I was directed to advance in the business of securing the land to the United States with all possible speed. [See note 5.]

I enclose, herewith, a copy of my letter to his Excellency Governor Tompkins, which I have referred to above.

I have the honor to be,
With great respect,
Your Excellency's most obedient,
JOS. G. TOTTEN, Capt. Engineers,
and brevet Lt. Col.

His Excellency LIEUT. GOV. TAYLER.

March 17. To the Senate: Transmitting the following document which had been received from the Governor of Ohio, and which sets forth the action taken by the legislature of that state relative to the proposed Erie canal:

"The joint committee to whom was referred the communication of his Excellency the Governor, of the 11th ult. together with the accompanying letter from the honorable De Witt Clinton, on the subject of the contemplated canal from Lake Erie to the Hudson River, have had the same under consideration, and now submit the following report:

From a view of the subject submitted to their consideration, your committee are fully impressed with the belief, that the making of a canal from the Hudson river to Lake Erie is an object of the first importance to this state, and the United States in general, both in a commercial and in a political point of view. The facility which it will afford to the exportation of the surplus produce of our luxuriant soil, and the consequent encouragement of agricultural and commercial enterprise, are effects too obvious to pass un-

noticed, and of too much importance to be neglected; as affording a safe, easy and expeditious mean of a mutual interchange of commodities between different sections of our common country, highly advantageous to all; as increasing the commercial connections, friendly intercourse, and ties of interest, and by these means strengthening the bonds of union between remote parts of the nation. The contemplated canal presents advantages vastly superior to those resulting from any work of the kind accomplished by the industry of man in any age or country.

From a geographical view of the state of Ohio, extending for a great distance on its northern frontier along the extensive navigable waters of the St. Lawrence, presenting all the advantages of a northern market, and washed on the eastern and southern boundaries by one of the great branches of the Mississippi; affording an easy access to a southern market, and a facility in obtaining the various productions of the south; connecting the northern with the southern, and the western with the Atlantic states; considering its happy climate, and the luxuriant fertility of its soil, intersected by navigable rivers and unbroken by mountains, we are struck with its natural advantages, which if improved by an enlightened and liberal policy, will render the situation of Ohio inferior to that of no state in the union, or country in the world. Among these improvements the contemplated canal is unquestionably of the first importance. Sensible that a work of such magnitude cannot be effected without the united and vigorous exertions of those interested, and fully impressed with the belief that the greatest advantages will result to the United States generally, and particularly to the state of Ohio, as well as the state of New York, from the completion of the contemplated canal, your committee are clearly of opinion that true policy as well as justice, require the state of Ohio, to lend its aid to the accomplishment of a work of such incalculable utility; we are at the same time sensible, that the funds of this state, will not permit us to aid in the undertaking in that proportion which might be expected from the relative population of the state.

Your committee had no accurate means of ascertaining the probable expense of the proposed canal, but from the best information they have been able to obtain, they are induced to believe that the work is not only practicable,

but can be accomplished at an expense within the reach of those interested; and from the enterprising spirit and enlightened policy of the state of New York, they feel but little hesitation in believing that it will be undertaken.

Your committee are at present unable to point out or recommend any particular method of aiding in the proposed work, not being in possession of any information relative to the system or plan which may be adopted by the state of New York for effecting the object. Your committee respectfully submit for consideration the following resolutions:

Resolved, by the general assembly of the state of Ohio, that this state will aid as far as its resources will justify, in making the contemplated canal from Lake Erie to the Hudson river, in such manner as may be deemed most advisable, when the plan or system which may be adopted by the State of New York for the accomplishment of that work may be known; and that his Excellency the Governor be requested to open a correspondence with the honorable De Witt Clinton, or such other persons as he may think necessary, and take such other means as he may deem advisable in order to ascertain the practicability and probable expense of making said canal, the probable time when the same will be commenced, the plan which may be adopted to carry it into effect, and such other information as he may deem important or useful, and communicate the same to the general assembly at their next session.

Resolved, That his Excellency the Governor be requested to transmit a copy of the foregoing report and resolution to the executive of the state of New York, and to the honorable De Witt Clinton, president of the board of commissioners for the canal from Lake Erie to Hudson's river.

THOMAS KIRKER,
Speaker of the House of Representatives.
ABRAHAM SHEPHERD,
Speaker of the Senate.

January 27, 1817.

March 17. To the Assembly: Transmitting papers relative to the case of Diana Sillick under sentence of death for murder.[10]

March 29. To the Assembly:

"GENTLEMEN.—Pursuant to a concurrent resolution of the Senate and Assembly of the 25th instant, I have, by a treaty, with the second christian party of the Oneida nation of Indians, released to them six hundred and seventy-eight acres of land, being the land heretofore purchased by the state from the first christian party, in exchange for which they have conveyed to the state 1356 acres of their reserve lands, in addition to which, about the same quantity of their lands have been purchased from them and conveyed to the state by the same treaty. At the request of the Indians, it was stipulated, that out of their land the state should grant to Dolly Denney, Abraham Denney and Sally Denney, 450 acres, in consideration of a relinquishment on their part of all claims on the annuities and lands of those Indians, to Aron Brown and Rufus Pettibone, 50 acres each, for sundry services rendered by them to the Indians, and to the Reverend Eleazer Williams, 150 acres, for his services as a minister of the gospel, and also that 600 acres of their land shall be sold, and the avails thereof be applied to the building of a church for them, in such manner as the governor may judge most expedient to effect that object.

Permit me to recommend to the legislature, the passing of an act to provide for the sale of these lands, and the

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[10] By chap. 171, passed April 5, the execution of the sentence in the case of Diana Silleck was suspended until the third Friday in April, 1818, and by chap. 13, passed February 27, 1818, her sentence was commuted to imprisonment for life.

protection in the meanwhile of the timber thereon, which is represented to be very valuable.[11]

JOHN TAYLER."

March 29th, 1817.

April 8. To the Legislature: Transmitting the annual return of the militia.

April 11. To the Assembly: Transmitting the following communication from the commissary general:

ALBANY, *April 11th*, 1817.

SIR.—The Legislature, at their extra session in November last, authorized me to cause that part of Collect Street which adjoins the arsenal ground in New York, to be filled, agreeably to the regulation of the corporation of that city; and soon after their adjournment, I went down for the purpose of commencing the business, but found that such was the situation of the gound at that time, that it could not be done without manifest injustice to the state.

The place to be filled is a pond, and is part of that formerly called the Collect, of from six to eight feet deep, the bottom of which is a quagmire; the proportion which the state ought to fill, is probably about one half of this pond; if I had commenced the filling last fall, the earth thrown in on the state's part, would have spread over the ground of other persons; it therefore appears to me proper to delay the business, as justice could only be done by a simultaneous filling, by all the parties interested, and I found that no arrangement of that kind could be made at that time, in consequence of the absence of the persons who owned

[11] Chap. 256, passed April 15, 1817, confirmed the exchange of lands with the Oneida Indians referred to in the treaty, and the commissioners of the land office were directed to issue letters patent to the persons named therein. The Governor was directed to sell six hundred acres of such land, and use the avails for the erection of a church for the Oneida Indians. The same act provided for the survey and sale of the lands acquired by the treaty. Provision was also made for the prevention and prosecution of trespasses on such lands.

the ground on the opposite side of the street to that which was to be filled by the state.

I have procured from the street commissioner of New York, an estimate of the probable amount of the expenses requisite to complete the improvements contemplated by the corporation of said city about the arsenal ground, which I have the honor to enclose. Elm and Franklin streets, mentioned in the estimate, have already been regulated, and the agent of the corporation is very urgent for payment of the state's proportion of the expense, which cannot be made without provision is made therefor by the Legislature.

The assistant commissary at New York informs me that the corporation have nearly finished filling the opposite side of Collect street, to that which belongs to the state, and that it is necessary to commence on that part immediately; an appropriation to cover that expense will also be necessary, as well as that of White Street, which will probably be opened in a short time.[12]

There has been received from the ordnance department of the United States, a number of arms belonging to this state, which have been collected, by their officers, and many others are expected; these will all want considerable repairs. It will also be necessary to put a new roof on the arsenal in this city, and a new fence round the lot adjoining it; for these purposes, and in order to enable me to have the property in the commissary's department kept in a proper state, an appropriation will be necessary.

All of which is respectfully submitted.

ANTHONY LAMB, C. G. of O. & M. S.

Honorable JOHN TAYLER
Lieutenant-Governor.

April 15. The Legislature adjourned without day.

[12] Chap. 8, passed November 12, 1816, authorized the commissary-general to fill up the ground surrounding the state arsenal in the city of New York, and chap. 261, passed April 15, 1817, made an appropriation for the expenses incurred in regulating and paving the streets adjoining the arsenal.

DeWitt Clinton

DEWITT CLINTON, Governor.

The Legislature met on the 27th of January, when Governor Clinton delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—Among the important duties enjoined upon the executive by the constitution, he is required to recommend such subjects to the consideration of the legislature, as shall appear to him to concern the good government, welfare and prosperity of the state. On this occasion I feel a peculiar gratification in the performance of this duty, from a persuasion that I address myself to a legislature, competent to distinguish and anxious to promote the true interests of our country.

As agriculture is the source of our subsistence, the basis of our strength, and the foundation of our prosperity, it is pleasing to observe the public attention awakened to its importance, and associations springing up in several counties to cherish its interest. Having received but a small portion of direct encouragement from government, it has been left to its own energies; and supported by a fertile soil, cherished by a benign climate, cultivated by industry, and protected by liberty, it has diffused its bounties over the country, and has relieved the wants of the old world. Relying hitherto almost exclusively on the fertility of our soil and the extent of our possessions, we have not adopted those improvements which the experience of modern times has indicated. And it has not been sufficiently understood that agriculture is a science, as well as an art; that it demands the labor of the mind as well as of the hands; and that its successful cultivation is intimately allied with the

most profound investigations of philosophy, and the most elaborate exertions of the human mind.

If not the exclusive duty, it is certainly the peculiar province of the state governments to superintend and advance the interests of agriculture. To this end, it is advisable to constitute a board, composed of the most experienced and best informed agriculturists and to render it their duty to diffuse agricultural knowledge; to correspond with the county societies; to communicate to them beneficial discoveries and improvements; to introduce useful seeds, plants, trees, and animals, implements of husbandry, and labor-saving machines; to explore the minerals of the country, and to publish periodically the most valuable observations and treatises on husbandry, horticulture and rural economy. The county societies ought to be enabled to distribute adequate premiums; and a professorship of agriculture connected with the board, or attached to the university, might also be constituted, embracing the kindred sciences of chemistry and geology, mineralogy, botany and the other departments of natural history. By which means a complete course of agricultural education would be taught, developing the principles of the science, illustrating the practice of the art, and restoring this first and best pursuit of man to that intellectual rank which it ought to occupy in the scale of human estimation.[1]

Good markets for agricultural productions are the vital incentive to agricultural industry; and nothing tends more directly to the promotion of these, than the establishment of cheap and easy modes of transportation, and the erection of flourishing villages, towns and cities, under the auspices of commerce, trade and manufactures. As foreign markets are always fluctuating in their prices, and uncertain as to their exigencies, we must rely principally on our own internal consumption for the stable and permanent support of agriculture. But this can only be effected by the excite-

[1] See *post*, p. 955, for the report of a joint committee on agriculture.

ment of other kinds of industry, and the creation of a great manufacturing interest. Every friend of this country must contemplate with regret the prostration of our manufacturies. The excessive importation of foreign fabrics was the signal of ruin to institutions founded by enterprising industry, reared by beneficial skill and identified with the general welfare. The raw materials of iron, woolen and cotton manufactures are abundant, and those for the minor and auxiliary ones can in most cases be procured at home with equal facility. Nothing is wanting to destroy foreign competition but the steady protection of the government and the public spirit of the country. High duties and prohibiting provisions applied to foreign productions, afford the most efficient encouragement to our manufactures; and these measures appertain to the legitimate functions of the national government. But much may be done by the state government by liberal accommodations, by judicious exemptions and by the whole weight of its influence, and much more may be accomplished by the public spirit of the community. For I am persuaded, that if every citizen who adopts the fabrics of other nations, would seriously consider that he is not only paying taxes for the support of foreign governments, but that he participates in undermining one of the main pillars of our productive industry, he would imitate the honorable preference which you have this day evinced in favor of American manufactures.[2]

The internal trade of a country is equally essential to the prosperity of agriculture, of manufactures and of commerce; for embracing the interests of all, it extends its enlivening influence to every important department of human industry. But it can never be advantageously nor extensively pursued and cultivated without easy and rapid communications by water courses, roads and canals; and it is among the first duties of government to facilitate the

[2] Chap. 67, passed March 31, revived the manufacturing corporations act of 1811, and continued it in force for five years.

transportation of commodities, by opening and ameliorating all the channels of beneficial intercourse; for in peace or in war it is equally essential to our cardinal interests.

The removal of the obstructions to the navigation of our principal river, has heretofore occupied the attention and received the assistance of the state. These impediments being principally occasioned by alluvial deposits and existing only at the head of the navigation, can be easily removed, if a proper plan be adopted. But instead of one concentrated effort, embracing the whole object and under the control of one board, several attempts have been made at different points and under different commissioners. And as they were confined to the improvement of particular parts, their efforts have not been attended with complete success. The unexpended appropriations, in addition to what has already been done, will go far towards accomplishing this important work. And it is a subject worthy of your particular attention and of your munificent interposition.[3]

The immense capital expended in turnpike roads has been very conducive to the promotion of inland trade. But the statutes prescribing the mode of constructing them, of inspecting them before the proprietors are authorized to receive toll, and of coercing their repair, are not sufficiently circumspect in their provisions nor energetic in their enforcements. The inspectors appointed to pronounce on the completion of roads are sometimes selected with an imperfect knowledge of their qualifications, and without any information as to their connection with the proprietors of the roads to be examined, and their proceedings are conducted without the sanction of an oath, and are not restrained by any declared penalties. The statutes providing for keeping these roads in good order, have been in a state of inexecution in most of the counties in consequence of

[3] Chap. 278, passed April 21, contained provisions for continuing the improvement of navigation of the Hudson river between Albany and Coeymans.

the non-appointment of commissioners. And it is not made the special duty of the ministerial officers of justice to complain when these communications are not maintained in a good state. Owing to this combination of unpropitious circumstances, the condition of these roads is a subject of general and well founded complaint, and calls loudly for the application of efficacious correctives.

I congratulate you upon the auspicious commencement and successful progress of the contemplated water communications between the great western and northern lakes and the Atlantic ocean. Near sixty miles of the western canal have been contracted for, to be finished within the present year, and it is probable that the whole of the northern canal will be disposed of in the same manner before the ensuing spring.[4]

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[4] The act of 1817, chap. 262, passed April 15, respecting navigable communications between the great western and northern lakes and the Atlantic ocean," opened with a preamble reciting that "navigable communications between Lakes Erie and Champlain and the Atlantic ocean, by means of canals connected with the Hudson river, will promote agriculture, manufactures and commerce, mitigate the calamities of war, and enhance the blessings of peace, consolidate the Union, and advance the prosperity and elevate the character of the United States; it is the incumbent duty of the people of this State to avail themselves of the means which the Almighty has placed in their hands for the production of such signal, extensive and lasting benefits to the human race;" and expressing "full confidence that the Congress of the United States, and the states equally interested with this State in the commencement, prosecution and completion of those important works, will contribute their full proportion of the expense; and in order that adequate funds may be provided, and properly arranged and managed, for the prosecution and completion of all the navigable communications contemplated by this act."

The act created a canal fund to consist of all such appropriations, grants and donations as may be made for that purpose by the Legislature of this State, by the Congress of the United States, by individual states, and by corporations, companies and individuals; the fund was to be under the management of a board of commissioners of the canal fund, to be composed of the lieutenant-governor, comptroller, attorney-general, surveyor-general, secretary and treasurer. The commissioners appointed under the canal act of 1816 were continued, and vested with authority to begin and carry forward the construction of canals. Provision was made for acquiring the

Notwithstanding the unfavorable season, the inexperience of the contractors, and the late commencement of operations, it is understood that the work to the extent of fifteen miles has already been done on the western canal. And it is confidently believed that the aggregate expense will be within the estimates of the commissioners. The enhancement of the profits of agriculture, the excitement of manufacturing industry, the activity of internal trade; the benefits of lucrative traffic; the interchange of valuable commodities; the commerce of fertile, remote and widespread regions, and the approximation of the most distant parts of the union by the facility and rapidity of communication that will result from the completion of these stupendous works, will spread the blessings of plenty and opulence to an immeasurable extent. The resources of the state are fully adequate without extraneous aid; and when we consider that every portion of the nation will feel the animating spirit and vivifying influence of these great works; that they will receive the benediction of posterity and command the approbation of the civilized world, we are required to persevere by every dictate of interest, by every sentiment of honor, by every injunction of patriotism, and by every consideration which ought to influence the councils and govern the conduct of a free, high minded, enlightened and magnanimous people.

In 1815, an act was passed for incorporating a company for opening the navigation between the head waters of the Seneca lake and the Chenango River. And in March last a law was enacted by the legislature of Pennsylvania, authorizing the appointment of commissioners to view and

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property of the Western Inland Lock Navigation Company. The act imposed a tax on salt, and also on steamboat passengers; the proceeds of which tax, together with the proceeds of certain lotteries and the duties on auction sales, after certain deductions, were to be paid into the canal fund. Work on the canal was begun at Utica on the 4th of July, 1817. Section 3 of the act of 1817 (taking lands for canal purposes) was sustained in Wheelock v. Young (1830), 4 Wend. 648.

examine the route of a contemplated canal to connect the waters of the Seneca lake and Tioga River, and to report on the practicability, importance and probable expense of making and completing it. In pursuance of which, commissioners have been appointed, have made the requisite examinations, and have probably performed the other duties assigned to them. Although the obvious tendency of this project is to facilitate the transportation of commodities from this to neighboring states, yet from a full persuasion that the prosperity of our country will be best advanced by multiplying the markets for our productions, and by intimate and beneficial connections between the different members of the confederacy, I consider it our incumbent duty to overlook local considerations and geographical distinctions, and to afford our cordial co-operation.

The fund appropriated to common schools consists of about one million dollars, and eighty thousand acres of land. The income for distribution this year is 60,000 dollars. Having participated in the first establishment of the Lancasterian system in this country, having carefully observed its progress, and witnessed its benefits, I can confidently recommend it as an invaluable improvement, which by a wonderful combination of economy in expense and rapidity of instruction has created a new era in education; and I am desirous that all our common schools should be supplied with teachers of this description. As this system operates with the same efficacy in education that labor-saving machinery does in the useful arts, it will be readily perceived that it is peculiarly adapted to this country.

For if by this means one teacher can perform the functions of ten, and if a pupil can learn in one week as much as he would in one month in the common way, it is evident that more wealth, more labor, more time and more industry, can be devoted to the ordinary occupations of life without interfering with the dispensations of knowledge. Wherever it has been attempted, it has succeeded, and several parts

of the state have experienced its benefits. Competent teachers can be educated for this express purpose, and in sufficient number to supply all our common schools, by sending intelligent young men to the Lancasterian seminaries in New York, where they will be instructed gratuitously, and where in the course of a few months they will acquire sufficient knowledge of the system. Appropriations for this purpose by the several common schools out of their portion of the general fund, under the direction of the superintendent, will defray the small expense attending the attainment of this important object.

The flourishing condition of our higher seminaries of education is a pleasing demonstration of the increasing progress of mental improvement, and a powerful incentive to liberal dispensations of public patronage. Under the auspices of learned and enlightened instructors, our colleges are constantly increasing in students, and extending in usefulness; and the intermediate seminaries between the common schools and colleges have also greatly diffused the blessings of education. Funds to the amount of 750,000 dollars have been granted to the three colleges, and about 100,000 to the thirty-eight incorporated academies. While this liberality of patronage reflects honor on the state, it cannot be too forcibly inculcated, nor too generally understood, that in promoting the great interests of moral and intellectual cultivation, there can be no prodigality in the application of the public treasure.

The colleges of physicians and surgeons are eminently deserving of public consideration. The increase of the institution in New York in the number of its students, in the amplitude of its accommodations, and in the respectability of its character, has kept pace with the science and celebrity of its professors. And the present addition of distinguished teachers to the establishment in Fairfield places it on high ground, and in the road to prosperity and usefulness. The appropriations to medical education do not ex-

ceed 60,000 dollars, a sum by no means commensurate with the importance of the object. Every well educated physician becomes not only a conservator of health, but a missionary of science. Wherever he establishes himself, he will convey and communicate useful knowledge. Two hundred of our youth annually dispersed over the country, instructed in medical knowledge and its cognate sciences, will, in the course of a few years, effect an augmentation in the state of general information equally honorable and beneficial to the community. And no measure can be more conducive to the prosperity of our medical institutions, to the respectability of the profession, and to the preservation of the public health, than a law rendering an attendance upon lectures in the university, an indispensable passport to medical practice.[5]

The principal societies devoted to literature, science and the arts in the city of New York, have, by the liberal patronage of the municipal authorities, been collected in a spacious and accommodating edifice under the denomination of the New York Institution. These associations are forming extensive and invaluable collections of the works of the fine arts, of our animal, vegetable and mineral productions; and of books and manuscripts illustrating our civil, ecclesiastical and natural history, our geography, antiquities and statistics. They are also zealously engaged in exploring the extensive field of natural science; in developing the principles of political philosophy, and in exalting the literature of our country. Whenever such institutions

[5] The Legislature answered this suggestion by enacting chap. 206 on the 20th of April, 1818, which required a four years course of study as a prerequisite to an examination to practise medicine. Such study must have been pursued with a regular physician and surgeon, except that time, not exceeding one year in any college or university, and also attendance upon a full course of lectures in either of the medical colleges was counted as a part of the course and equivalent to one year's study with a physician. Candidates for licenses to practise medicine must have been twenty-one years of age.

appear, they are entitled to the countenance of government, for there will ever be an intimate and immutable alliance between their advancement and the glory and prosperity of the state.

The state of our finances demands your mature consideration.

It appears that the funds of the state amount to about	$4,500,000.00
And that the debts of the state amount to	2,710,082.50

Composed of the following specifications:

Stock, bearing 7 per cent. interest	$1,106,397.50
Stock, bearing 6 per cent. interest	777,000.00
Debt to the bank of New York, bearing an interest of 6 per cent	826,685.00
	$2,710,082.50
It further appears that the sum total of expenditures for fortifications, arsenals, magazines, ordnance, arms, ammunition and other warlike stores; for the pay of the militia, sea fencibles, and volunteers, is	$846,350.83
That the amount of direct taxes of the national government, assumed and paid by the state is	1,113,126.23

Making in the whole $1,959,477.06, of debt incurred by the state, in consequence of its patriotic exertions for the public defence, and for the payment of which a tax of two mills on a dollar has been imposed.

It will be observed that we pay a war interest of 7 per cent. for a considerable part of this debt. As the stock is redeemable, it will be easy to pay it off by a new loan at six per cent. It will be advisable to dispose of the three

per cent. stock, and to apply the avails to the reduction of the debt. These proceeds, together with $226,000 of the revenue of last year, and a new loan of 1,100,000 dollars at six per cent. will extinguish the whole of the present stock in May or June next, and leave about 150,000 dollars applicable to extraordinary purposes. The canal stock is not included in this statement, because the finances of this work are to be kept distinct from the ordinary revenues of the state.[6]

If this plan should be adopted, our debt would be reduced to 1,900,000 dollars.

I also recommend the reduction of the tax to half its present amount. The annual revenue will still be about 500,000; and as our permanent expenses, including the interest of the public debt, will not exceed 440,000 dollars, there will remain a surplus of 60,000 dollars applicable to extraordinary objects. This sum may be increased to upwards of 100,000 by financial improvements. The funds of the state will be augmented by the payment of the debt due from the United States, which has not yet been adjusted; and great and useful accessions may be made in other respects. The imposition of auction duties in lieu of those of the United States, lately withdrawn, will protect our regular traders, afford some relief to our manufacturers, and enlarge the fund for internal improvement. The revenue from escheats, properly collected would be considerable, and a much greater sum may be raised annually by

[6] An act, chap. 282, "to improve the funds, and to provide for the redemption of the funded debt of this state," was passed on the 21st of April. The comptroller was authorized to sell the United States three per cent. stock, and use the proceeds for the redemption of the funded debt of the state, bearing seven per cent. interest. He was also authorized to borrow $1,000,000 at six per cent. The act contained numerous provisions regulating financial administration, including a reduction of the tax from two mills to one mill. The same act authorized the appointment of a cashier of a bank in New York, who was required to issue certificates of stock for the state loan.

the lotteries already authorized by law.[7] And it may be proper to observe that our financial operations may be facilitated by the establishment of an office for the transfer of stock in the city of New York, which can be done without any expense. [See note 6.]

This view of our finances is certainly encouraging. It shows that our debt may be greatly reduced; that our taxes may be diminished one half; that all our contemplated improvements may be executed, and that a great fund will still remain for all the beneficial objects of society.

The public lands have not been comprehended in this exposition of our resources. Including the town lots, the islands and our rights of pre-emption, together with the detached parcels and large tracts, I consider them fully equivalent in value to the whole debt against the state. The immense fund appropriated to schools and academies, has also been kept out of view, because I deem it a sacred provision for the education of the present and all future generations, which ought never to be disturbed, diverted or impaired.

With respect to the debt which will be incurred in the prosecution of internal improvements, there can be no doubt but that light tolls on our own commodities, and higher transit duties on foreign productions, will in a few years not only accumulate a fund for its extinguishment, but be a prolific source of revenue for the general purposes of government. And this subject may in other respects form the basis of important arrangements in our system of political economy. It may be rendered a powerful instru-

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[7] Chap. 136, passed April 10, contained provisions relative to the lottery for the promotion of literature, and also the medical science lottery. The lottery managers were required to enforce the provisions of statutes relative to private lotteries, the sale of tickets by outside lotteries, and the insurance of lottery tickets. Chap. 261, passed April 21, extended the time in which the managers of lotteries were required to make their returns.

ment for encouraging our own manufactures, and for restraining the pernicious use of foreign commodities.

The best systems of finance are, however, vain and illusory, without the practice of economy. Parsimony ought to be avoided as well as profusion, but all governments are too prone to give into wasteful extravagance. Appropriations of public money should be cautiously made, and its expenditures carefully watched. The accountability of public agents should be enforced, and the ordinary forms of legislation ought never to be varied, unless in extreme cases. With the observance of these salutary precautions; with the application of a well regulated economy, and the adoption of proper and judicious retrenchments, I feel a thorough persuasion that the flourishing condition of our finances may be completely restored; that all our improvements may be successfully executed; and that this state, rich in her resources, public spirited in her objects, wise in her deliberations, and determined in her purposes, may attain unprecedented prosperity.

Although the cultivation of the blessings of peace is most congenial with the spirit of our government, the precepts of religion, and the maxims of sound policy, yet the seeds of war and controversy are planted too deeply in the constitution of human nature for us to expect an exemption from the common fate of nations; and the experience of the United States utterly forbids the hope. Since our existence as a nation, besides the war of the revolution and contests with the savage of this continent and the barbarians of Africa, we have been engaged in hostilities with France and Great Britain. We are in the neighborhood of British and Spanish provinces. Our enterprising spirit of migration and commerce will bring us in contact with the trading and colonial establishments of Russia. The West India islands, owned by different sovereigns, may in the course of time be a fruitful source of controversy; and our exten-

sive commerce will often render it necessary to vindicate our neutral rights against the aggressions of the belligerent powers of Europe. Even at this present period, the patriotic struggles of the people of Spanish America, for emancipation from the restraints of commercial monopoly, and the shackles of colonial subjection, may compromit our pacific relations. Whatever may be the cause, the time must arrive when it will become necessary to appeal to the sword, and this appeal ought never to be made without finding us in a state of ample preparation.

Permit me then to recommend to your attention the revision and melioration of our militia system.

The statutes relative to the militia were not revised in 1812, and it is now necessary to combine them into one law; to reconcile their different provisions, and to engraft such amendments as experience has shown to be proper.[8] It is believed that essential improvements may be made in the organization, dress and discipline of the militia; in the imposition, collection, and disposition of fines; in the promotion of military instruction, and in the encouragement of meritorious service or distinguished skill. In consequence of the imperfect state of some of the returns, the precise number of our enrolled militia cannot be ascertained, but it may be safely estimated at 120,000 men. This immense physical force, properly organized, arranged, armed, and directed may defy the efforts of any enemy. But it ought not to be concealed, that not one third of our militia is armed and equipped; and that too in a very imperfect manner. This state does not own more than twenty thousand stands of arms. The act of congress of 1808, for arming and equipping the whole body of the militia, however well intended, is totally inadequate to the object. Our militia increases more rapidly than the supply, and even if our population were stationary, it would take near half a

[8] A new militia act was passed, chap. 222, on the 21st of April.

century before ample provision could be derived from that source.

The constitution of the state ordains that the militia at all times, as well in peace as in war, shall be armed and disciplined, and in readiness for service, and that a proper magazine of warlike stores proportionate to the number of inhabitants shall forever at the expense of the state and by acts of the legislature, be established, maintained, and continued in every county.[a] Although it has not been practicable to comply with these injunctions in their strict sense and to their full extent, yet it is certainly our duty as well from the reverence for the constitution, as from regard for the public safety, to replenish our arsenals and magazines, and to give our physical force all the advantages of energetic arrangement and complete equipment.

The system of criminal jurisprudence which was adopted in 1796, has not realized the expectations of benevolence. The expenses of this establishment to the first day of the present month, amount to the enormous sum of $976,157.44, of which the following are the principal items:

For erecting the prison, including site.....	$243,346.00
For the support of the institution, exclusive of the compensation of the officers and guard	374,846.70
For the salaries of the officers of the prison, exclusive of the guard.....	155,324.43
For pay of the guard, including their arms, clothing, &c.	134,660.16
For transportation of convicts to the state prison, since 1812, inclusive, being before that year paid by the agent of the prison..	67,980.15
	$976,157.44

The efficacy of this system in reforming offenders, has not stood the test of experiment; and as it is very difficult

[a] Const. 1777, § 40.

to obtain accurate accounts of the convictions under the old system, it is not in my power to state with certainty, whether crimes have been increased under the new, because in order to arrive at a fair result, it is necessary to compare the convictions and the population under the operation of both codes; but I am induced to believe that in this momentous respect, it has not answered our wishes. It is with inexpressible regret that I am compelled by an imperious sense of duty, to make this communication. I have done it, not with a view of re-introducing sanguinary punishments, which are as abhorrent to my feelings as they are to the policy of good government, but to attract your attention to this important subject, and to solicit the full exertion of your faculties in its investigation. I am persuaded that the penitentiary system has not been subjected to a fair experiment, and that under a proper arrangement, and a virtuous and able administration, it will answer all the ends of criminal justice without imposing any great burden on the state.

It is reasonable to impute our disappointment in a considerable degree to the incompetency of the means provided for executing the system on an extensive scale. The want of room has been hostile to discipline, injurious to industry, and productive of heavy expense; and when the state undertook to carry on extensive manufacturing operations, it became liable to losses in every stage of their progress from the purchase of the raw material to the sale of the wrought article. The injudicious organization of the board of superintendence; the repeated changes in that body; and the unavoidable frequency of pardons have also produced detrimental effects. But making ample allowance for all these disadvantages, and comparing our penitentiary with those of other states, I cannot resist the impression that there has been some radical error in the general management. It behooves the representatives of the people to institute a

solemn inquiry; to ascertain the causes of the failure, and to apply the appropriate remedies.[9]

The efficacy of the penitentiary system might be signally promoted by the erection of solitary cells in the several counties for the punishment of all offenders below the degree of grand larceny, and by doubling the value of the property stolen in order to constitute that crime. Solitary confinement is, next to death, the most appalling punishment which can be inflicted on a human being; and the expense of erecting these prisons and of maintaining the convicts will be very inconsiderable, when compared with the importance of the object. Under our present code, the pardoning power has been frequently exercised in a salutary manner by prescribing as a condition that the convict to whom mercy is extended, shall depart from the state and never return. This is in substance the punishment of banishment, and it would be well to fortify the efficacy of such pardons by imposing severe penalties for their violation.

As connected generally with this subject, it is proper to mention that the dispensation of criminal justice is attended with heavy, and it is believed, with unnecessary expense; and that great benefits might probably arise from some improvements in the system, and from a new arrangement of the Court of Exchequer.

In the case of creditors and debtors our law has departed from its general policy, and has authorized the former to wield the power of punishment by the imprisonment of the latter for a default in the payment of debts, without considering whether the failure be imputable to misfortune or

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[9] Chap. 5, passed February 10, regulated the transportation of prisoners to the state prisons; chap. 53, passed March 24, provided for clothing for the prison guard; chap. 211, passed April 20, authorized the agent of the New York prison to purchase raw materials, and provide for the employment of convicts in the manufacture thereof. The same act also appropriated $100,000 to complete the south wing of the Auburn prison, specified certain counties from which convicts should be confined in this prison, and contained numerous regulations concerning prison administration.

to fraud. Within a few years this code has been relaxed, and the debtor has been liberated from close incarceration, and admitted to the benefit of extensive limits on his giving security that he will not depart from them. The consequence is that it entangles and holds only the poor and the forlorn, while those favored with friends or opulence escape from its severity. If the legislature shall consider it expedient to change the present system and exempt the unfortunate debtor from the penalties of imprisonment, rigorous provisions ought to be adopted for the punishment of fraud, and the rights of creditors should be fortified by the terrors of criminal punishment. But if it shall be deemed unadvisable to proceed to that extent, the poor debtor confined within the walls of a prison ought at least to be supported by his unrelenting creditor, and the repetition of scenes at which humanity shudders ought no longer to disgrace our country.[10]

Our statutes relating to the poor are borrowed from the English system. And the experience of that country as well as our own, shows that pauperism increases with the augmentation of the funds applied to its relief. This evil has proceeded to such an alarming extent in the city of New York, that the burdens of heavy taxation which it has imposed, menace a diminution of the population of that city, and a depreciation of its real property. The consequences will be very injurious to the whole state; for the decay of our great market will be felt in every department of productive labor. Under the present system the fruits of industry are appropriated to the wants of idleness, a laborious poor man is taxed for the support of an idle beggar; and the vice of mendicity, no longer considered degrading, infects a considerable portion of our population in

[10] Chap. 14, passed February 27, and chap. 175, passed April 17, were intended to afford relief to imprisoned debtors, by providing among other things for the discharge of a debtor on his petition, and the surrender of his property.

large towns. I am persuaded that the sooner a radical reform takes place the better. The evil is contagious, and a prompt extirpation can alone prevent its pernicious extension. The inducements to pauperism may be destroyed by rendering it a greater evil to live by charity than by industry; its mischiefs may be mitigated by diminishing the expenses of our charitable establishments and by adopting a system of coercive labor; and its causes may be removed by preventing intemperance and extravagance, and by intellectual, moral and religious cultivation. It is the decree of heaven that our lives should be spent in useful or active employment. "In the sweat of thy face shalt thou eat bread, till thou return unto the ground," was the declaration of the Almighty to our first parent; and a course of blind indiscriminating prodigal benevolence defeats its own object, by attempting to counteract the laws of our nature, and the designs of Providence. Charity is an exalted virtue, but it ought to be founded on reason, and regulated by wisdom. While we must consider as worthy of all praise and patronage religious and moral societies, Sunday, free and charity schools, houses of industry, orphan asylums, savings banks, and all other establishments, which prevent or alleviate the evils of pauperism, by inspiring industry, dispensing employment and inculcating economy; by improving the mind, cultivating the heart, and elevating the character, we are equally bound to discourage those institutions, which furnish the ailment of mendicity, by removing the incentives to labor, and administering to the blandishments of sensuality.

The Indians in our territory are experiencing the fate of all savage and barbarous tribes in the vicinity of civilized nations, and are constantly deteriorating in character and diminishing in number, and before the expiration of half a century there is a strong probability that they will entirely disappear. Their reservations amount to about 250,000 acres of excellent land, but as the greater part is

within the cession to Massachusetts, the state has but little interest in the preemption. It is understood that the western Indians are desirous that ours should emigrate to an extensive territory remote from white population, and which will be granted to them gratuitously. As this will preserve them from rapid destruction, as it is in strict unison with the prescriptions of humanity, and will not interfere with the blessings of religious instruction; and as their places will be supplied by industrious and useful settlers, who will augment our population and resources, it is presumed that there can be no reasonable objection to their removal. This, however, ought to be free and voluntary on their part, and whenever it takes place, it is our duty to see that they receive an ample compensation for their territory. At the present time they are frequently injured and defrauded by intrusions upon their lands, and some of the most valuable domains of the state are subjected to similar detriment. It is very desirable that our laws should provide adequate remedies in these cases, and that they should be vigorously enforced.

The evils arising from the disordered state of our currency have been aggravated by the banking operations of individuals, and the unauthorized emission of small notes by corporations.[11] They require the immediate and correcting interposition of the legislature. I also submit it to your serious consideration, whether the incorporation of banks in places where they are not required by the exigencies of commerce, trade or manufactures, ought to be countenanced. Such institutions having but few deposits of money, must rely for their profits principally upon the circulation of their notes, and they are therefore tempted to extend it beyond their faculties. These bills are diffused either in the shape of loans, or by appointing confidential agents to exchange them for those of other establishments.

[11] Chap. 236, passed April 21, prohibited private and unauthorized banking.

But the former mode being conducive to profit, is at first generally adopted, and in the early stages of their operations, discounts are liberally dispensed. This produces an apparent activity of business and the indications of prosperity. But it is all factitious and deceptive, resembling the hectic heat of consuming disease, not the genial warmth of substantial health. A re-action soon takes place. These bills are in turn collected by rival institutions, or pass to the banks of the great cities, and payment being required, the only resource left is to call in their debts, and exact partial or total returns of their loans. The continual struggle between conflicting establishments to collect each others notes occasions constant apprehension. The sphere of their operations is narrowed. Every new bank contracts the area of their paper circulation and after subjecting the communities within their respective spheres of operation to the pernicious vicissitudes of loans at one period profusely granted, and at another parsimoniously withheld, they finally settle down into a state of torpid inaction, and become mere conduits of accommodation to a few individuals. The legislature are then solicited to apply a remedy by the incorporation of other banks, whereas every new one of this description, unless attended by peculiar circumstances paralizes a portion of capital and augments the general distress.

The banishment of metallic money, the loss of commercial confidence, the exhibition of fictitious capital, the increase of civil prosecutions, the multiplication of crimes, the injurious enchancement of prices, and the dangerous extension of credit, are among the mischiefs which flow from this state of things. And it is worthy of serious inquiry whether a much greater augmentation of such institutions may not in course of time produce an explosion that will demolish the whole system. The slow and periodical returns of husbandry being incompetent to the exigencies of banking establishments, the agricultural interest

is the principal sufferer by these proceedings. And it is with deep regret that I feel constrained to mention that some practitioners of the law, regardless of the high respectability of their professions, have added to the distresses of the country by buying up notes in order to obtain exorbitant premiums and the costs of prosecution. The fall of the manufacturing interest, the excessive consumption of foreign commodities and the introduction of wide-spreading luxury and wide wasting extravagance, have had a most pernicious effect on the public welfare.

But I felicitate you on the prospect of better times. The blessings of Heaven have visited the labors of the husbandman during the last year, and the products of another season will in all probability create a balance in favor of the country. Public attention is awakened to the encouragement of the useful arts, and to the diffusion of the lights of religion and knowledge; and we are, I hope, returning to those habits of economy and to those observances of republican simplicity, which are demanded by the voice of patriotism, and the genius of our government. And when we compare our actual and prospective state with that of other nations we have every reason to be grateful to Divine Providence for the exalted destinies of our country.

I shall now lay before you a letter from the governor of Pennsylvania, respecting the contemplated canal between the Seneca Lake and one of the branches of the Susquehannah River,[12] a communication from the secretary of state enclosing a representation of the minister of Great Britain respecting the statute of this state "to amend an act entitled an act relative to the pilots of the port of New

[12] The letter from the Governor of Pennsylvania shows that he had appointed commissioners under an act of that State providing for canal communication between Seneca lake and the Tioga river. That these commissioners were about to enter upon their duties, and that he, the Governor, did not anticipate any objection to a cooperation on the part of Pennsylvania with the plan of internal improvements contemplated by New York.

York";[13] a request from the engineer of the United States who superintends the erection of the important works at Rouse's Point on Lake Champlain, for further cessions of soil and jurisdiction;[14] certain proceedings of the states of Kentucky, New Jersey and Connecticut, respecting amendments to the national constitution;[15] and sundry papers relative to the demand of this state against the United States.[16] All these subjects will require your attention in the course of the session, but the last from the circumstances of the case, ought to be immediately considered.

I should do injustice to my feelings, were I not to express my grateful and respectful sense of the confidence reposed in me by the people of this state. Conscious that I ought to be judged by my conduct and not by my professions, I shall waive the usual expressions on these occasions, and shall only declare that in the proper performance of my official duties I rely upon the cordial concurrence of the co-ordinate authorities, and the magnanimous support of the people. And I humbly implore the blessing of Almighty God upon the faithful execution of our high respon-

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[13] Chap. 266, passed April 21, revived the pilot law of 1813, but with the proviso that "British vessels coming directly from any port or ports in Great Britain or Ireland, shall not, during the existence of the present treaty between the United States and the United Kingdom of Great Britain and Ireland, be subject to pay any other or greater fees than the vessels of the United States, under and by virtue of the act hereby revived."

[14] Chap. 288, passed April 21, ceded to the United States, Island Point near Rouse's Point, and also land under adjoining waters.

[15] The Kentucky amendment prohibited any increase in the salary of a representative during the term for which he was chosen.

The New Jersey amendment provided for the election of representatives in Congress by single districts, and for the election of presidential electors from the same districts, except that the two additional electors were to be chosen in such manner as the Legislature might prescribe.

The Connecticut resolution disapproved the North Carolina proposition relative to the election of representatives and presidential electors.

[16] Chap. 4, passed February 10, provided for the settlement of the claims of New York against the United States, and chap. 288 provided for the compensation and expenses of the agent appointed to negotiate the settlement.

sibilities, and upon our zealous co-operation with the national and state governments, in all wise and patriotic measures to promote the happiness, to advance the honor, and to perpetuate the freedom of the American people.

DE WITT CLINTON.

Albany, January 27, 1818.

SPECIAL MESSAGES.

January 27. To the Senate:

Objections by the Council of Revision to a bill passed at the last session "for the relief of Eunice Chapman, and for other purposes." [17]

"1. Because by the first section of the bill, the marriage contract between the said Eunice Chapman, and her husband James Chapman, is not only declared to be dissolved, but it is declared that nothing in the act contained shall be construed to give the said James Chapman a right to marry, during the life time of the said Eunice. The ground of this declaration, according to the recital of the bill, is, that the said James Chapman hath deserted his wife, and joined the society called Shakers. The Council do not, by this objection, mean to maintain, that if a husband or wife deserts the other, and becomes a member of any religious sect which considers, and practically declares, matrimonial connections to be sinful, unlawful and void, it would not be competent to render such an act a sufficient cause for divorce; their objection to this section is, that the said James Chapman is by force of the act itself, and without the benefit of a judicial examination and trial, either as to his conduct, or as to the practices of the Shakers, disquali-

[17] The Chapman bill was not passed over the veto, but another bill on the same subject was passed. This was also vetoed, but was passed over the veto and became a law, chap. 47, on the 14th of March. See special message of February 27th.

fied hereafter from exercising the natural right of contracting marriage, when under no existing marriage contract.[b]

2. Because by the second section of the bill, the Chancellor is not only authorized to dissolve the marriage contract whenever any married person, being an inhabitant of this state, shall have joined the society of Shakers, and remained with them for the term of three years; but it is also declared, that it shall not be lawful for the person so joining the Shakers, after such dissolution of the marriage contract, to marry during the life time of the former husband or wife; the mere fact of joining the society of Shakers, is thus made, not only cause of divorce, but it is punished by disability to marry, without any previous judicial inquiry or decision in respect to the acts or practices of that religious sect, or any adjudication upon them as being inconsistent with the free exercise and enjoyment of that religious profession or worship, secured by the constitution."[c]

January 27. To the Assembly:

"Gentlemen.—I now communicate to you the report of the honorable Mr. Justice Yates, of the trial of Abraham Kesler, who was convicted of murder at a court of Oyer and Terminer, held in Schoharie county, on the 12th and 13th days of September, and who was sentenced to be executed on the 17th day of October last.

I received the communication marked No. 2, from Dr. MacNeven, Professor of Chemistry in the University, a few days after its date—and the representation of Silas Thompson, marked No. 3, on the evening of the 15th day of October. During the interval between the receipt of Dr. MacNeven's communication and the day assigned for the punishment of Kesler, I was absent from home a considerable part of the time on public business of moment,

[b] Const. 1777, § 13.
[c] Const. 1777, § 38.

which prevented me from investigating the case with the attention due to its importance; and the late receipt of Mr. Thompson's statement, altogether precluded me from ascertaining its accuracy.

Under these circumstances, I considered it advisable to suspend the execution and to report it to you, in order that you may in obedience to the injunction of the constitution 'either pardon or direct the execution of the criminal, or grant a further reprieve.'[a]

The paper marked No. 4, contradicts the statement of Mr. Thompson; and I am assured and believe, that he has misrepresented the conduct of the public prosecutor as to the opening of the case to the petit jury.

This suspension has, however, afforded ample time for mature deliberation in a case involving the life of a human being. And, whatever may be the result, it has given the convict more time for repentance and reformation; it may produce the establishment of a certain rule for the conduct of courts and juries in analogous cases; and the community will be satisfied with a decision formed under circumstances so favorable to a just and wise conclusion.[18]

DE WITT CLINTON."

Albany, 27th January, 1818.

January 28. To the Senate:

"GENTLEMEN.—I consider it proper to lay before you, for your consideration, the cases of five convicts, (who were convicted of murder, at a court of oyer and terminer, held in the county of Oneida,) as contained in the report of the honorable Mr. Justice Platt. As the criminals are sentenced to be executed on the second Friday of February, an early attention to this communication will be necessary.

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[a] Const. 1777, § 18.

[18] By chap. 61, passed March 27th, the Legislature directed the execution of Kesler on the last Friday of May.

You will also receive with this message, applications in favor of mercy to Roswell T. Pratt, and John Denny, two of the convicts.[19]

DE WITT CLINTON."

Albany, 27th January, 1818.

January 29. To the Assembly: Transmitting a presentment by the grand jury of New York to the court of General Sessions, relative to poor debtors. [See note 10.]

The Grand Jury say:

"That being desirous of ascertaining the effect of the law passed by the honorable the Legislature of the state of New York, at their last session, entitled 'an act for the relief of persons imprisoned for debts less than twenty-five dollars, in the city and county of New York,' passed April 15, 1817, they have called before them the sheriff of the city and county of New York, in order to receive from that officer the requisite information; and that it appears from his evidence, that previous to the enacting of the said law, the number of debtors in confinement, and supported, as well as their families, by the charity of the good people of the city, upon an average of two years ending in the month of May last past, amounted 1090 per month: That from the month of May last (the time which the said law went into operation in this city) to the first day of January instant, the average is 498 per month; making a difference of 592 fed monthly by the hand of charity. And that there is no person in confinement on process issuing from the assistant justices' court in the city and county of New York, except those committed as freeholders and as trespassers, whose cases do not come under the meaning of said act. And the said sheriff hath further stated, that, in his opinion, the extension of the statute above mentioned, to all cases not exceeding one hundred dollars, would prevent a great deal of misery and moral evil, for various reasons, which his former situation as keeper of the gaol of this city has

[19] David Linus, John Denny, Roswell T. Pratt, John Harris, and James O'Brien were pardoned by chap. 3, passed February 10.

enabled him to investigate and ascertain. Therefore the Grand Inquest, considering that the present order of things, concerning poor debtors, is susceptible of further improvement, and that neither the court nor the corporation of the city can offer any legal remedy in the premises, have resolved to request his honor the Mayor to transmit to his Excellency the Governor of the State, the facts above mentioned, with the prayer, that they shall be communicated by him to the honorable the Legislature, to obtain from that patriotic body the desired improvement of our civil laws concerning poor debtors. By the laws of the state, the attorney in every suit is liable for the fees due to the officers of the court; and a law making it obligatory on the plaintiffs and their attornies to provide also for the support of the defendant, while in confinement, would be productive of the most beneficial and salutary effects."

January 30. To the Senate: Transmitting a resolution adopted by the legislature of North Carolina approving an amendment to the federal constitution proposed by New Jersey, providing for the election of representatives in Congress by single districts, and providing that "for the purpose of appointing electors for the President and Vice-President of the United States, in each district entitled to elect a representative in Congress of the United States, the persons qualified to vote for representatives, shall appoint one elector and no more. The additional two electors to which each state is entitled, shall be appointed in such manner as the Legislature thereof may direct."[20]

February 2. To the Assembly:

"GENTLEMEN.—In the course of the last summer, Major Dalaby was appointed on the part of the United States, to adjust the account of the United States with this State, for arms and other military stores, and Mr. Lamb, Commis-

[20] The Legislature approved the North Carolina proposition relative to the election of representatives and presidential electors by districts.

sary General, was appointed by me, to conduct the negotiation on the part of this State. After having proceeded to a certain extent, I found that the final settlement could be effected with more promptitude and satisfaction at the seat of the national government, and General Lamb accordingly repaired to that place for that purpose. The paper marked No. 1, will show my views of the subject, and General Lamb's report and the accompanying documents marked No. 2, 3, and 4, exhibit the final arrangement, which was conducted with a liberal and friendly disposition. The Commissary General is entitled to great credit, for his zeal and attention to the interests of the state on this important occasion, and when it is understood that the adjustment restores to the state, upwards of thirty pieces of cannon and twelve thousand stands of arms, and other military stores, exceeding two hundred thousand dollars in value, I am persuaded that it will give general satisfaction.

De WITT CLINTON."

Albany, February 2, 1818.

The following is the correspondence referred to in the message:

(No. 1.)

Albany, *December* 16, 1817.

Gentlemen.—Major Dalaby in behalf of the United States, and General Lamb in behalf of this State, have adjusted the accounts of small arms and equipments under the act of Congress of 1808, for arming and equipping the whole body of the militia, which have accrued between the passing of that act and the first day of January 1816; and it is understood that Major Dalaby is authorized to arrange generally the claims of the above parties, respecting military stores. But as it is important to establish some general rules or principles of adjustment, I have conceived it expedient to dispatch General Lamb to Washington, at

which place he will meet Major Dalaby, and where the negotiation may be finally terminated. As this is an important object to the state, I have requested General Lamb to call on you, to follow such advice as you may give, and to engage your favorable efforts.

It has been urged on the part of the United States, that the state is responsible to them for military stores issued to our militia while in their service. This ground is wholly untenable, and it has or will be abandoned. Where there is no control, responsibility cannot exist.

On the other hand, it is contended by the state, that the United States are answerable for all issues by the state of its military stores to the officers of the army and navy. To this there can be no objection.

That they are also responsible for all military stores issued by the state to its militia, in the service of the United States. To this there may be opposition — but as the militia, when in the service of the United States, composed part of their military force, were subject to martial law, and were entirely under their control, it is reasonable and just that the military stores furnished by the state, should be returned — and it appears to me, that the adoption of this rule is a necessary sequence from the admission of the former principle. But if the United States will not recognize this principle, they certainly cannot refuse to compensate the state for such military stores as were delivered to the militia when in their service, and which were lost or destroyed during that period.

I have the honor to be,
Very respectfully,
Your most obed't. servant,
DE WITT CLINTON."

To the Honorable the Senators and Representatives in Congress, from the state of New York.

(No. 2.)

Albany, *January* 31, 1818.

To His Excellency De Witt Clinton,

Governor of the State of New York.

In compliance with your Excellency's directions, I proceeded to the city of Washington, for the purpose of completing the adjustment of the accounts between the United States and this state, for military stores furnished during the late war, which had been commenced with Major Dalaby, and am happy to inform you, that I have effected a settlement of those accounts upon just and equitable principles.

The claims of this state against the United States, for military stores furnished during the late war, were —

1st. For arms and other military stores, issued to militia in the service of the United States.

2d. For arms and other military stores, issued to volunteers enlisted in the service of the United States, for one year.

3d. For arms and other military stores, issued to the army and navy of the United States.

The property embraced by the two last items of the above claims, it was admitted by the agent of the United States, was a proper charge against the United States, and was accordingly credited to this state; but it was contended that many of the arms which had been issued to the militia, which were embraced by the first item, had been returned to the state arsenals; and that those which were issued by the state authorities to the army and volunteers, were in fact part of those originally issued to the militia; and consequently, that this claim ought not to be allowed in its full extent; and upon examination and comparison of the vouchers, I was satisfied that this was substantially true; it was, however, admitted by the said agent, that such parts of the military stores as had been issued by the state au-

thorities to the militia, and were captured by the enemy, or lost or destroyed in the service of the United States, ought to be credited to the state; and upon this principle that part of the account was finally adjusted.

The accompanying abstract shows the property due to the state, agreeably to the settlement, and for which the general government has agreed, by its agents, to remunerate it, and which the ordnance department of the United States has directions to replace, as soon as conveniently can be done, as will appear by a letter addressed to me from that department, a copy of which is herewith transmitted.

There were three pieces of brass ordnance belonging to this state, delivered for the use of the navy of the United States, during the late war; for two of these, the value was paid me in money, upon an estimate made by the senior officer of the ordnance department, amounting to eleven hundred and one dollars twenty cents. There still remains one nine pounder, with its equipments, and one three pounder carriage unpaid for, the voucher which was presented for the delivery of these not being fully satisfactory to the Secretary of the Navy.

The account for arms due this state, under the act of Congress of 1808, for arming the whole body of the militia of the United States, has not been finally adjusted, owing to the ordnance department of the United States not having in its possession the necessary documents to enable it to make an apportionment. I have reason to believe, from information communicated to me on that subject, that this state has still a number of arms to receive under the aforesaid act, which will be delivered in the course of the present year.

With great respect,
I have the honor to be,
Your Excellency's most ob't. servant.

ANTHONY LAMB,
C. G. O. & M. S.

(No. 3.)

U. S. Ordnance Department,

Washington, *Jan.* 16, 1818.

Sir.—I have the honor to inform you, that the department of War, to whom was referred the summary abstract or account of military property, issued by the state of New York during the late war, as communicated to the honorable the Secretary, in a letter from this department, dated the 13th inst. has sanctioned the report made thereon, and directed that a settlement of the claim should be made with the state accordingly.

In consequence of that decision, I have to acquaint you that the senior officer in charge of the ordnance service in the Northern Military Division, will be instructed by this department, to take measures as early as circumstances may admit, to effect a settlement by deliveries of the military stores to your department, or to such other officer as may be appointed by the executive to receive them.

A copy of the abstract or account, certified by an officer of this department on the 12th inst. is transmitted to you herewith.

With much respect, I am
Sir, your obed't. servant,
(By order,) JNO. MORTON,
Capt. of Ordnance.

To Col. Anthony Lamb, Commissary General
of Military Stores of the State of New York,
Washington.

February 3. To the Senate: Transmitting a petition in favor of Roswell Pratt under sentence of death for murder. [See note 19.]

February 6. Thanking the Senate for its address.

February 6. To the Assembly:

"Gentlemen.—By an act of last session, the person administering the Government was directed to cause six hun-

dred acres of land, belonging to the Oneida Indians, to be sold, and the avails to be applied to the erection of a church for their benefit.

The accompanying communication, from the Surveyor General, will inform you of the measures adopted for that purpose. As a considerable credit was essential to an advantageous sale, it is necessary, in order to gratify the anxious desires of the Indians, for a place of divine worship, that the money should be advanced in the first instance out of the treasury; a measure which will be attended with no injury to our funds, and which, it is hoped, may be of signal benefit to that unfortunate people.[21]

DE WITT CLINTON."

Albany, 6th February, 1818.

February 7. To the Senate: Transmitting a resolution adopted by the Legislature of Tennessee proposing to amend the federal Constitution by providing that

"No law, varying the compensation of the members of the Congress of the United States shall take effect, until the time for which the members of the House of Representatives of that Congress, by which the law was passed, shall have expired."

February 7. To the Assembly: Transmitting a communication from the second Christian party of Oneida Indians who were interested in the sale of the six hundred acres of land referred to in the special message of February 6, requesting that provision be made for the erection of a small chapel without delay. [See note 21.]

February 9. To the Senate:

"GENTLEMEN.—At the request of that respectable institution, the American Antiquarian Society, I present to you their application for a copy of our laws and journals; and

[21] By chap. 174, passed April 17, the Legislature directed the Governor, through an agent or agents to be appointed by him, to erect a church for the second Christian party of Oneida Indians, and expend therefor the proceeds of the six hundred acres of Indian land which had been sold for that purpose.

I am persuaded that the Legislature will, on this occasion, evince their usual liberality and regard for useful establishments.

I avail myself of this opportunity to suggest the expediency of having all the important papers relative to Indian affairs transcribed and deposited in the Secretary's office; a great number are in my possession, derived from my predecessors, and which may in time be lost or injured, without some precautionary measure of this kind.

De WITT CLINTON."

Albany, 9th February, 1818.

February 9. To the Assembly:

"Gentlemen.—I transmit to you a report signed by Isaac Keeler and Richard Hubble, relative to the condition of the Montauk Indians. They state that they were appointed by my predecessor to make the inquiries indicated in their report; but at what time and on what suggestions I am not advised. They have also sent to me a copy of a communication heretofore made on this subject, and which, at their request, I also lay before you.

De WITT CLINTON."

Albany, 9th Feb., 1818.

The following is the letter to Governor Clinton referred to in the message:

To His Excellency De Witt Clinton, Esquire, Governor of the State of New York.

Sir.—We, the undersigned, having been appointed by your predecessor in office, Governor Tompkins, the last year, to proceed to the east end of Long Island, and there to search and ascertain the real situation of the tribe of Indians living at or near Montauk Point, and to report to him our opinion thereon; and having performed the said duty, the best in our power, at which place we found those natives of the soil, poor Indians, not more than half fed, half clothed, and suffering for almost every necessary of

life, which, under such circumstances, and from further information had thereon, and after mature deliberation by us, and also by a request of the said Indians, who have no one to plead their cause nor to tell their complaints and sufferings; we, having the aforesaid trust given to us, we feel it a duty we owe to humanity to ask, sir, your indulgence to make this a further communication; humbly hoping that your Excellency will cause our former extracts and communications, and opinions thereon, which we gave to the then Governor Tompkins (which we understood was not laid before the house last winter) together with this our second report, to be laid before the Legislature of the state, or a committee from that honorable body, as your Excellency may think proper. We found, sir, on record at East Hampton, which has been given in our first report, a charter from Governor Dongan, dated about a century and a half ago, giving to the trustees of East Hampton his power and authority to buy and possess lands of the said Indians, at the east end of Long Island. Under such authority, the aforesaid trustees of East Hampton have purchased from the said native Indians, all or nearly the whole of the lands that the Indians claimed eastward of the said East Hampton, for a very small consideration, and that appears very uncertain to have been paid to them; and in consequence of which, the aforesaid trustees released back to the said tribe of Indians the use of a certain part of the tract, so long as they should remain a tribe; but the privileges and appurtenances contained in the lease are very small and contracted, considering the quantity of land received from them: they are not permitted to pasture a single hoof of a creature, to sell no grass nor hay—and the said trustees and inhabitants of East Hampton, claim it as a right to turn in their fatten and store cattle into all the Indian inclosures, after the fifteenth of November, and for them to remain there until on or about the 5th of May, in every year, to the very great detriment of the said tribe; they are also obliged to keep up the fences around all the

fields the whole of the time. There is several other complaints of a minor nature, which have been embraced in the first report, which we do not wish to trouble your Excellency about at this time. If, sir, there is no remedy for that poor tribe of Indians, they must bear with it; but hard is their fate; for they are undoubtedly the children of the state, and have a claim on their humanity — and will they not, this winter's session, lend their fostering hand of charity to relieve from wretchedness and woe some of her outcast native children. We believe and hope they will — for they are so poor and helpless, and we may say almost friendless, that they are unable to defend their just rights; for they suffer many impositions from strangers who frequent their shores. For, sir, if it should appear, after a thorough inquiry and investigation into facts, that Governor Dongan had no legal authority or power from any king, prince or potentate whatever, of the realm of England, to make, give or grant such a charter to the trustees of East Hampton, it will then of course become a very important matter of inquiry. And if it shall be found that no such power doth legally exist, it will then, in time, when that Indian tribe becomes extinct appear to this state: for those Indians informed us, all they wanted was a decent support — for if the state would support them they were willing to relinquish the residue to the state; and that they were also willing to give it to them in fee simple, whenever they ceased to be a tribe, on those conditions.

According to the best information which we received, there is in said tract of land from ten to twelve thousand acres, and one half of it may be as good land as what is called the first quality of land in the state; for we believe from human conjecture, the aforesaid tribe cannot continue to exist as a tribe beyond half a century, for they decrease very fast; for poverty and the many casualties incidental to Indians, reduces them very rapidly. They do not now amount to more than about sixty souls that are living on the premises. We wish further to solicit that your

Excellency would appoint, or recommend to be appointed, a discreet and prudent person to be an overseer over that tribe, to direct them the art of cultivating their lands, and other useful improvements, for they have long been accustomed to idle habits. Suffer us once more, sir, to make one appeal to the benevolence and humanity of the Legislature of this state, who are in general assembly convened, that they, as the guardians of the state, would have compassion on this poor tribe, as we believe it is the only tribe of Indians in the state which have not been cheered by the bounties of the state. This tribe suffered very much for blankets and common clothing to cover them in the inclement season, for we are informed that several of them have frozen to death, years past.

All of which we humbly submit to the discretion of your Excellency, and remain your Excellency's humble servants.

ISAAC KEELER.
RICHARD HUBBLE.

New York, January 20th, 1818.

The journal also contains an earlier letter to Governor Tompkins of the same general import.

February 10. To the Assembly:

"GENTLEMEN.—I now communicate the information required by a resolution of your honorable House of the 5th instant:

By an act passed on the 6th April, 1804, provision was made for erecting the Capitol. The fee of the ground is in the corporation of the city of Albany. The act directed that sufficient and commodious apartments should be made for the Legislature, the Council of Appointment, the Courts of Justice, and the Common Council of Albany.

By an act passed on 7th April, 1807, additional appropriations were made for erecting and completing the said building, on condition that the corporation of the city of Albany, should enter into a bond to the people of this State, in the penal sum of fifty thousand dollars, to be taken by

and deposited with the Comptroller with the following condition, to wit, that if at any time hereafter the Legislature shall deem it advisable to dispose of their interest in the said House, and the said corporation shall not elect to purchase it, that then the said house and lot shall be sold at public auction, and the proceeds of such sale shall be applied to reimburse the state, and the said corporation and the county of Albany, for the advances of money now and heretofore made for the erection of the said house, to be apportioned to the state, the said corporation and the said county of Albany in proportion to such advances.

This bond, I am informed, was entered into and deposited in the Comptroller's office.

An act was passed on the 30th March, 1811, entitled 'an act to designate and set apart certain apartments of the Capitol for public purposes.'

The resolution of the Common Council of the city of Albany, filed in the office of the Secretary of the State, and of which a copy is herewith transmitted contains their stipulation on the subject.

The report of the Comptroller and Secretary of the State, which I now communicate, will indicate the monies advanced by the state, the corporation and the county of Albany, for the erection of the Capitol, and also the disposal of the apartments.

De WITT CLINTON."

Albany, 9th February, 1818.

The following is the resolution of the Common Council of Albany:

City of Albany, in Common Council,

April 1st, 1807.

Resolved, as the sense of this Board, that the ground appropriated in the public square for the erection of a public building for the accommodation of the Legislature, shall be and hereby is declared to be appointed for the site of the said building, and that the same, when erected and completed, shall be used for the accommodation of the

Legislature, the Court of Chancery, the Supreme Court, the Court of Common Pleas for this county, the Mayor's Court and Common Council of this city, and such other public purposes as may from time to time be necessary and not incompatible with the uses above expressly designated.

Resolved, That in order to confirm the said appropriation, a copy of these resolutions, under the common seal of this Board, and certified by the Mayor, be filed in the office of the Secretary of this State.

(Signed) P. S. VAN RENSSELAER, *Mayor*.

The following are the communications from the comptroller and secretary of state.

STATE OF NEW YORK, COMPTROLLER'S OFFICE,
ALBANY, *February 7th*, 1818.

SIR.—Agreeably to your Excellency's request of this morning, I have the honor to state, that the total expense of erecting the Capitol, including the expense of furnishing the Council Chamber, amounts to one hundred and ten thousand six hundred and eighty-five dollars and forty-two cents:

And that for this sum the State paid...	$73,485.42
The City of Albany.....	34,200.00
And the county of Albany.....	3,000.00
	$110,685.42

I have the honor to be,
With great respect,
Your Excellency's most obed't. servant,
ARCHIBALD M'INTYRE, Comptroller.

His Excellency DE WITT CLINTON,
Governor of the state of New York.

To His Excellency Governor CLINTON.

SIR.—In obedience to your Excellency's request relative to the appropriations of the different apartments in the Capitol, I have the honor to state, that all the rooms on the

first floor are occupied by the state, excepting one in the north east corner, by the Common Council of the city of Albany.

The rooms in the second story are occupied by the Court of Chancery, Supreme Court, Court of Common Pleas, Court of General Sessions, and Mayor's Court, except the one immediately above the lobby of the House of Assembly, which is used two or three times a year by the Supervisors of the county of Albany.

All the apartments in the third story are unoccupied, except the south west corner room, which was appropriated in the year 1812, by an act of the honorable the Legislature, and until they shall otherwise direct, for the use of the Society for the Promotion of Useful Arts.

The apartment in the south east corner of the basement story, is occupied by the Clerk of the county of Albany; and the north east rooms in the same story, by the keeper of the Capitol.

From your obed't. servant,
CHARLES D. COOPER, Secretary.

State of New York,
Secretary's office,
Albany, 9th February, 1818.

February 11. Thanking the Assembly for its address.

February 13. To the Senate: Transmitting a resolution adopted by the Legislature of Vermont declaring inexpedient an amendment proposed by Kentucky relative to the time when an increase of salary of representatives in Congress shall take effect. This is the Tennessee resolution referred to in the special message of February 7. The Vermont legislature also declared inexpedient the Massachusetts proposition relative to the election of representatives in Congress and presidential electors.

February 14. To the Assembly: Transmitting the annual report of the inspector general of staves and heading.

February 17. To the Assembly:

"GENTLEMEN.—I communicate to you a representation of Loran Torbell, one of the chiefs of the St. Regis Indians, made in behalf and by authority of his tribe; and as the request contained in it is reasonable and proper, I respectfully recommend a prompt compliance.[22]

DE WITT CLINTON."

Albany, 17th February, 1818.

The following is the communication referred to in the Governor's message:

To His Excellency Governor CLINTON, of the State of New York.

The chiefs of the St. Regis Indians by this their petition most respectfully approach your Excellency, to show, that in March, 1802, a law was passed for the benefit of our tribe, appointing three trustees, namely, William Gray, Lewis Cook and Loran Torbell, to manage and improve their affairs. From that period until the late war, they continued happy amongst themselves; but the war having produced a feeling of opposite interest in the tribe, they became divided almost equally in number of young men, leaving your old chiefs with their adherents steady in the cause and interest of the United States. In the course of the war their trustee, William Gray, was taken prisoner at St. Regis, and carried to Quebec, where he died a prisoner of war. Their other trustee, Lewis Cook, after being actively engaged with General Brown, near Buffalo, died

22 By chap. 93, passed April 3, Peter Tarbell and Jacob Francis were appointed trustees to fill the places of those who had died.

at that place. Since their death, your Excellency's petitioner, Loran Tarbell, the surviving trustee, taking to his private council Peter Tarbell and Jacob Francis, old chiefs, in which the tribe have full faith, has continued to act as for the whole, and has the satisfaction of assuring your Excellency, that the trust reposed in him has been discharged conscientiously and with full regard to justice.

Now, your Excellency's petitioner growing old, and desirous to be relieved in part from the responsibility which he has felt in the discharge of his duties, humbly prays your Excellency will be pleased to get a law passed, appointing the aforementioned Peter Tarbell and Jacob Francis, as trustees to his aid, and to fill the vacancies occasioned by the death of the former trustees, and confirming all acts of your petitioner, done in conjunction with the latter, since the death of the former trustees: And your petitioner will, as in duty bound, ever pray.

LORAN TORBELL.

William L. Gray, interpreter.

February 17. To the Assembly: Transmitting the annual report of the commissary general of ordnance and military stores.

February 18. To the Assembly:

"Gentlemen.—In communicating to you the annual report of the superintendents of the New Stockbridge and Brothertown Indians, I take the liberty of requesting your particular attention to that part which relates to intrusions on the lands of those Indians.

De WITT CLINTON."

Albany, 18th February, 1818.

The following is the part of the report relating to intrusions:

"And we would generally report, that difficulties are

continually increasing among the Indians, in consequence of white people settling on their lands, particularly among the New Stockbridge Indians, who are every day leasing their lands to the poorest class of community, both the appropriated and unappropriated, and that as the law now is, it is almost impossible to remove them, as the sheriff and other officers are unwilling to proceed without the responsibility of the attorney, and that the annuity of the New Stockbridge Indians would not defray the expense, and the persons on the land are generally so poor, that they cannot pay the judgment against them or proper fees of removal. We therefore would wish that some more summary method might be had."

February 19. To the Assembly: Transmitting a communication relative to certain lands confiscated in Putnam county. The message was in response to an assembly resolution requesting information on this subject.[23]

February 19. To the Assembly:

"GENTLEMEN.—By the second section of the 'act respecting the settlement of the demands of this state against the United States, and for other purposes,' I am authorized to institute a negotiation with the national government, for the sale of the fortifications, buildings and lands at the Narrows. If a sale should be made, the heavy ordnance at that place will be entirely useless to the state, and as no power is granted by the bill, to include them in

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[23] The preamble to chap. 100, passed April 10, recited that John Jacob Astor claimed title to certain lands in Putnam county which had been sold by the State under the attainder of Roger Morris and Mary, his wife, and the Governor was directed to appoint two commissioners, who, with the Attorney-General, were required to investigate the Astor claim, and report their opinion to the Governor, who was directed to communicate the same to the legislature at its next session. See special message of February 3, 1819.

the arrangement, I take the liberty of soliciting your attention to this omission[24]

De WITT CLINTON."

Albany, 19th February, 1818.

February 23. To the Senate: Transmitting a resolution adopted by the Legislature of New Jersey relative to the boundary line between that state and New York.

February 24. To the Senate:

"Gentlemen.—I now lay before you a copy of an agreement with the St. Regis Indians for the purchase of land, with a view that legislative provision may be made, if necessary, to carry its requirements into effect.

I also transmit a memorial of John Hunsdon, which is in some measure connected with this subject, and which I recommend to your favorable notice.

I also avail myself of this opportunity to communicate an address from the principal chiefs of the Seneca Indians. This pathetic representation of the injuries which they too often experience, is entitled to your serious consideration.

De WITT CLINTON."

Albany, 23d February, 1818.

The Senate journal contains the treaty, and also the Hunsdon memorial. The following is the address from the Seneca chiefs:—

"To His Excellency De Witt Clinton, Esq. Governor of the State of New York.

February 14, 1818.

Father.—We learn from your talk delivered at the great council fire in Albany, your opinion of the condition and prospects of your red children.

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[24] By chap. 48, passed March 19, amending the act relating to settlement of demands against the United States, the Governor was authorized to negotiate for the sale to the general government of the ordnance and other apparatus connected with the fortifications on Staten Island.

FATHER.—We feel that the hand of our God has long been heavy on his red children. For our sins he has brought us low, and caused us to melt away before our white brothers, as snow before the fire. His ways are perfect; he regardeth not the complexion of man. God is terrible in judgment. All men ought to fear before him. He putteth down and buildeth up, and none can resist him.

FATHER.—The Lord of the whole earth is strong; this is our confidence. He hath power to build up as well as to pull down. Will he keep his anger forever? Will he pursue to destruction the workmanship of his own hand, and strike off a race of men from the earth, whom his care hath so long preserved through so many perils?

FATHER.—We thank you that you feel anxious to do all you can to the perishing ruins of your red children. We hope, Father, you will make a fence strong and high around us, that wicked white men may not devour us at once, but let us live as long as we can. We are persuaded you will do this for us, because our field is laid waste and trodden down by every beast; we are feeble and cannot resist them.

FATHER.—We are persuaded you will do this for the sake of our white brothers, lest God, who has appeared so strong in building up white men, and pulling down Indians, should turn his hand and visit our white brothers for their sins, and call them to an account for all the wrongs they have done them, and all the wrongs they have not prevented that was in their power to prevent, to their poor red brothers who have no helper.

FATHER.—Would you be the father of your people, and make them good and blessed of God and happy, let not the cries of your injured red children ascend into his ears against you.

FATHER.—We desire to let you know that wrong information hath reached your ears. Our western brothers have given us no land. You will learn all our mind on this sub-

ject, by a talk which we sent our great Father, the President of the United States. We send it to you, that you may see it and learn our mind.

RED JACKET, his X mark,
YOUNG KING, his X mark,
CAPTAIN BILLEY, his X mark,
CAPTAIN POLLARD, his X mark,
TWENTY CANOES, his X mark,
JAMES STEPHENSON, his X mark,
CHIEF WARRIOR, his X mark,
JOHN SNOW, his X mark,
STRIDE TOWN, his X mark,
WHEEL BARROW, his X mark,
CAPTAIN COLE, his X mark,
BIG KETTLE, his X mark.

Done at the great council fire, Seneca Village, near Buffalo, 14th Feb. 1818.

Harry York, Interpreter, his X mark.

P. S.— The above Chiefs request your Excellency to publish, or cause to be published, that article of the treaty between the state of New York and the Indians, that relates to their fishing and hunting privileges, which their white brethren seem to have forgotten."

February 24. To the Assembly: Transmitting papers in a *habeas corpus* proceeding, the Governor said:

"Gentlemen.— My object in communicating to you the papers accompanying this message, is to request your attention to a radical defect in the *habeas corpus* act; an act which is justly considered one of the great bulwarks of freedom. If the injunction of a writ of *habeas corpus* is not abused, no coercive power can be applied in the vacation of the supreme court; and the consequence is, that the most flagrant violations of personal liberty may be perpetrated without the means of immediate and adequate re-

dress. In examining the law of the case now communicated, you will find the magistrate had no authority to issue compulsory process against the delinquent.[25]

DE WITT CLINTON."

Albany, 23d February, 1818.

February 24. To the Assembly: Transmitting the annual report of the governors of the New York Hospital.

February 26. To the Assembly: Transmitting the annual report of the inspector of flour and meal for the city and county of New York.

February 26. To the Assembly:

"GENTLEMEN.—I take the liberty of requesting your attention to an act, entitled 'an act to raise monies for building a new court house and fire proof clerk's office in the county of Ulster,' and the act, entitled 'an act to amend an an act entitled "an act to raise monies for building a new court house and fire proof clerk's office in the county of Ulster."' In the execution of the building contemplated by these acts, controversies have arisen among the commissioners, and application having been made to me, to exercise the power of removal, supposed to be vested in the executive, I declined to interfere, from an opinion, that I had no authority in the case. The supervisors of the county then considered it proper to remove the commissioners, and have applied to me to appoint others. In looking at the supplementary act, I observe, that the authority of the executive is limited to the appointment of commissioners in the place and stead of the commissioners named in the previous act; and this power having been ex-

[25] Chap. 277, passed April 21, amended the *habeas corpus* act of 1801, chap. 65, by extending its provisions to all cases where any person not being committed or detained for any criminal or supposed criminal matter, nor in execution by legal process, shall be confined, or restrained of his, her or their liberty, under any color or pretence whatsoever. The act also authorized the writ during vacation.

ercised by my predecessor, it becomes at least questionable, whether I am authorized to appoint in the place and stead of commissioners not named in the said act.

I therefore respectfully recommend this subject to the consideration of the legislature, with an expectation, that provision will be made for the appointment of commissioners in the customary mode.

Two communications from the board of supervisors, on this subject, are herewith submitted.[26]

De WITT CLINTON."

Albany, 26th February, 1818.

February 27. To the Senate:

"Gentlemen.— The accompanying papers will indicate the necessity of authorizing the transfer of insane persons from the state prison to a more suitable place, and of providing for their reception in the lunatic hospital of New York.[27]

De WITT CLINTON."

Albany, 23d February, 1818.

The accompanying papers related to specific cases apparently requiring a transfer from the prison to an asylum, which in one of the letters is called a "maniac asylum." The managers of the New York asylum said the accommo-

[26] By chap. 69, passed March 31, 1818, the power of appointment and removal of the Ulster court house commissioners was vested exclusively in the board of supervisors.

[27] The prison acts were amended by chap. 211, passed April 20, by providing that whenever the board of surgeons and physicians of the state prison at New York shall duly report to the inspectors, the name or names of any prisoner or prisoners, who are maniac, or insane, it shall and may be lawful for the said inspectors, to transfer such insane prisoner or prisoners to the lunatic hospital of New York, the directors or managers of which are hereby required to receive such prisoners, and to confine them according to the rules of that institution.

dations in that institution were not sufficient to permit the admission of more inmates.

February 27. To the Assembly: Transmitting communications from General M'Lean and Colonel Boughton relative to claims for services rendered during the late war.[28]

February 28. To the Senate:

Objections by the Council of Revision to a bill "for the relief of Eunice Chapman, and for other purposes." [See note 17.]

The bill was objected to (1) because the marriage contract between the parties named in the bill was dissolved. The Council discussed the relations and benefits of marriage as a social institution, and said that "regarding that institution, therefore, as the greatest of earthly blessings, the Council feel the solemnity of their obligation to guard it with scrupulous fidelity." It seems that the husband had abandoned his wife, and taking the three children of the marriage had joined the society of Shakers. The Council deemed this abandonment an insufficient ground for dissolving the marriage, saying that the peculiar teaching of that society concerning the relations of the sexes might be accepted for the purpose of obtaining an absolute divorce, and that such acceptance was subject to change according to the conscience of the individual. The Council believed that the act of joining the Shakers did not materially differ from any ordinary case of abandonment, for which there was already ample remedy with a provision for alimony. Following other general observations on the same subject, the Council say:

"Like all other great benefits, matrimony, in its universal application, produces many partial evils and much in-

[28] Chap. 270, passed April 21, "for the relief of certain volunteers and militia called into service for the defence of the frontiers of the state in the late war, and for other purposes," authorized the commissary-general to audit and settle claims against the state for services and contingent expenses of the militia, and also for arms pressed into service and lost during the late war, and make his report to the Legislature at its next session.

dividual suffering; but the Council are firmly convinced, that the sum of individual happiness, as well as the peace and order of society, requires that the nuptial tie should be indissoluble, except for the cause of adultery.

While the partial evils of indissoluble matrimony are sometimes witnessed and deplored, we ought to be consoled by the reflection, that the peace and character of many thousands of families are preserved by the mutual forbearance and concessions between husband and wife, which are induced by the ever impressive consideration, that the voluntary tie which bound them can never be dissolved.

History and experience unite to confirm the belief, that the measure of purity, or of profligacy, in public morals, in all countries and under every form of government, is essentially graduated according to the degree of sanctity and stability of the marriage contract.

Secondly. The Council object to this bill, because it absolutely and unconditionally dissolves the contract of marriage, by statute authority, without any previous judicial inquiry and trial by jury, as to the truth of the facts on which the divorce is founded.

This is the first instance of such an exercise of legislative power not only since the adoption of our state constitution, but since the foundation of the colony of New York, and the Council deem this innovation to be unsound in principle, and highly dangerous in its tendency.

In the recital of a statute, entitled 'an act directing a mode of trial, and allowing of divorces in cases of adultery,' passed the 30th day of March, 1787, the Legislature of this state declared, 'that it was more advisable for the Legislature to make some general provision in such cases, than to afford relief to individuals upon their partial representations, without a just and constitutional trial of the facts.'

With great respect, the Council now advert to the principle thus early established in that recital, and firmly believe, that the security of private rights, and the genius and

spirit of the constitution require, that this principle should be steadily maintained.

Thirdly. The Council object to this bill, because they deem it inconsistent with the 38th article of the Constitution of this state, which ordains 'that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this state to all mankind: provided, that the liberty of conscience shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of this state.'

By the second section of the bill now under consideration, it is enacted, 'that in all cases where any husband or wife, having any child or children by the marriage, shall hereafter separate, the one from the other, and shall or have attached him or herself to the said Shakers, and shall also take or have taken with him or her such child or children, being under age, the chancellor, or any judge of the supreme court, may award the charge and custody of such child or children to that parent who shall not have joined the said society of Shakers.'

By the existing general law of this state, applicable alike to all classes of men, excepting slaves, the guardianship, custody and control of infant children, belong exclusively to the father; who, by the same general law, is also entitled to the services of his infant children, without accountability.

Under the provisions of this bill, the father may be divested of these precious and important rights, for the sole and avowed cause, that he has become a member of the society of Shakers.

This special regulation is in the nature of a penalty; and in the opinion of the Council, it is practically making a 'discrimination,' and giving a 'preference,' whereby the equality of civil rights (as between persons of different religious professions) is essentially impaired.

If the Legislature can constitutionally deprive a man of his parental rights, merely because he is a Shaker, they have an equal right, for the same cause, to disfranchise him of every other privilege, or to banish him, or even to put him to death. If the principle be admitted, it must rest in discretion alone, how far it shall be carried in the measure of punishment.

There is no evidence that the society of Shakers are guilty of any 'acts of licentiousness,' or of any 'practices inconsistent with the peace and safety of this state,' and although we may lament what to us appear absurd errors in their religious creed, yet so long as they preserve the character which they now possess, for sobriety, industry and peaceful habits, the Council cannot regard them as having forfeited the protection secured by that article of the constitution. To justify such an act of denunciation, the danger to 'the peace and safety of this state' must be not merely speculative, remote and possible, but imminent and certain.

To condemn a religious tenet, by legislative authority, is to assume a power hitherto unknown in our statute book; and upon the most mature reflection, the Council are of opinion, that it would be not only unprecedented in the annals of our state, but highly dangerous and alarming in its consequences.

In regard to the people called Shakers, the only possible apprehension of danger to the state, on account of their religious faith and practice, arises from the tenet, that sexual intercourse is sinful; and it is worthy of remark, that if they practice according to that belief, the very cause from which danger is apprehended, to wit, celibacy, is the very reason why that sect cannot be propagated to any dangerous extent. The supposed evil, therefore, carries along with it an effectual remedy.

The absurdity of that tenet is so plain and obvious, as to prove an antidote and security against any serious danger

of its prevalence, provided the excitement of persecution be not added to that of fanaticism. It may be pitied as a delusion, but it ought not to be regarded as a crime."

February 28. To the Assembly: Transmitting papers in a suit between John Champlin and George Clarke, and suggesting that inasmuch as "the controversy is now concluded, it may be proper to give some final order to the comptroller respecting it."

March 2. To the Assembly: Transmitting a communication from George Clarke, claiming reimbursement for expenses incurred in consequence of the suits brought against him by the state referred to in the preceding message.

March 4. To the Senate:

"GENTLEMEN.—At the opening of the session, I had the honor to suggest, that 'a much greater sum may be raised annually by the lotteries already authorized by law.' Further reflection has confirmed the accuracy of this opinion —but it ought to be understood, that tickets from unauthorized lotteries have been sold within this state, to a very large amount—that unless the market is kept supplied with tickets of our own lotteries, large sums will continue to be drawn from us by the sale of interdicted ones; and that if it be determined to maintain the system of lotteries, it ought to be placed on such a footing, as to secure to us the benefit of all the revenue derivable from this source.

I therefore respectfully recommend a revision of the system, with a view to prevent, by more efficient regulations, the sale of tickets from other states, or countries. And also to subject the schemes of lotteries to the inspection and approbation of the Comptroller, and generally to adopt such improvements as may be considered advisable for the

attainment of the greatest revenue in the shortest time, and with the least injury to the community. [See note 7.]

De WITT CLINTON."

Albany, 3d March, 1818.

March 5. To the Senate:

"Gentlemen.—I lay before you a proposal to sell to the state, for the use of the militia, a system of military tactics and discipline, prepared by a board of officers, and adopted by the national government. The great importance of military instruction on the most approved plans, must render the distribution of this work, among the militia, an object worthy of your favorable attention.

De WITT CLINTON."

Albany, 5th March, 1818.

The proposal was from William A. Mercein, who had prepared a system of military tactics and discipline, which had been adopted by the war department of the United States.[29]

March 5. To the Assembly:

"Gentlemen.—In communicating to you the inclosed letter from the chiefs and warriors of the second Christian party of the Oneidas, I take the liberty of referring you to a former message on the same subject, and of recommend-

[29] The Assembly adopted a resolution authorizing the Adjutant-General to purchase a sufficient number of "Scott's Exercise," published by P. Potter, to furnish each general, field and staff officer and captain, whose duty it shall be to deliver over the same to their successors in office, of the infantry, light infantry, grenadiers and riflemen within this state, with a copy, and cause the same to be distributed, provided he can procure the same at fifty cents apiece; and the Legislature will provide by law for the expense."

The Senate did not concur in this resolution, but did concur in another, recommending that the militia "conform their system of discipline and exercise to that of the army of the United States, until Congress shall make provision for a system of discipline for the militia in conformity to the constitution of the United States."

ing the adoption of measures which may gratify these Indians in their wishes, for the benefit of religious instruction. [See note 21.]

DE WITT CLINTON."

Albany, March 5, 1818.

See special message of February 7.

March 6. To the Senate:

"GENTLEMEN.—The Privy Seal of the state is in such a condition, that I consider it proper to apply for authority to procure a new one; and as it is used for military commissions, it will be advisable that this should be done as soon as possible.

DE WITT CLINTON."

Albany, 6th March, 1818.

March 6. To the Assembly: Transmitting a communication from the comptroller relative to accommodations for the state prison guard. [See note 9.]

March 11. To the Senate:

"GENTLEMEN.—There is reason to apprehend that a forgery, relative to a private claim, has been committed a considerable time since, in one of the books of public records, in the office of the Secretary of this State. It is highly important that this subject should be investigated, and that precautionary measures, if necessary, should be adopted. With this view, I have made this communication.[30]

DE WITT CLINTON."

Albany, 11th March, 1818.

[30] The Senate referred the message to the Attorney-General for inquiry, who reported that in his opinion two deeds, specified by him, in the office of the Secretary of State had been forged, and he recommended that a committee of the Senate be appointed with plenary power to investigate the whole subject. The Senate accordingly, on the 12th of March, appointed a committee and clothed it with full power to make the needed investigation.

March 13. To the Assembly:

"GENTLEMEN.—At the request of S. Edmonds, Esq. Pay Master General of the militia, I enclose a communication from him, relative to his compensation when acting in that capacity; there is no law authorizing my interference in his favor, and legislative interposition is necessary, in order to enable the comptroller to effect a final settlement of his accounts, as well as to compensate him for his services.

DE WITT CLINTON."

Albany, March 12, 1818.

March 18. To the Assembly:

"GENTLEMEN.—I submit to you a proposal of Paraclete Potter, of Dutchess county, to furnish a system of tactics and discipline for the instruction of the militia; also, a similar proposition from Isaac Maltby, of Massachusetts; together with a second communication from W. A. Mercein, on the same subject. [See note 29.]

I avail myself of this opportunity, to inform you, that it is necessary to authorize the purchase of a considerable number of sets of the Revised Statutes, in order to supply the new counties and towns with the laws.[31]

DE WITT CLINTON."

Albany, March 18, 1818.

March 21. To the Senate: Transmitting two resolutions adopted by the legislature of Georgia, one disapproving the North Carolina proposition relative to the election of representatives in Congress and presidential electors, see note 20; and the other approving the Kentucky proposition prohibiting the increase of the salary of a member of Congress during his term.

March 24. To the Assembly: Transmitting a communication from the Commissary General relating to assessments made by the city of New York on the arsenal lot for

[31] The purchase of additional copies of statutes was authorized by chap. 225, passed April 21.

opening Canal Street, and opening and improving Collect, Walker, Pump and Rynders Streets, involving a claim of $2,051.47, on which legislative action would be necessary if the claim was to be paid by the state. It appeared from the communication that the arsenal lot was to be held by the state only so long as used for arsenal purposes, after which it was to revert to the city, with all buildings and improvements. The Commissary General therefore raised the question whether the assessments ought to be paid by the state.[32]

March 25. To the Assembly: Transmitting a proposal from LeRoy Bayard & Co. relative to a sale of arms to the state.

April 1. To the Assembly: Transmitting and recommending particular attention to a communication from the commissioners for improving the navigation of the Hudson River below Albany. [See note 3.]

April 20. To the Legislature: Transmitting the annual return of the militia.

April 21. To the Assembly:

"GENTLEMEN.—In looking into the militia bill, I find that the artillery companies in the country, are deprived of the allowance of powder and ball for practice heretofore granted, and that it is continued to those in the city of New York. I presume that this is the result of inadvertence, and I take the liberty of recommending a continuance of a provision which is calculated to produce considerable benefit, and which is attended with little expense to the state.[33]

DE WITT CLINTON."

Albany, 21st April, 1818.

April 21. The Legislature adjourned without day.

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[32] The appropriation act, chap. 275, passed April 21, provided for the payment of the assessment on the New York arsenal lot.

[33] The Legislature adopted a concurrent resolution directing the Commissary-General to continue to issue the allowance of powder and ball heretofore granted to the several artillery companies.

REPORT ON AGRICULTURE.

The Governor's suggestions concerning agriculture, *ante*, p. 897, were considered by a joint committee of the Senate and Assembly, and its deliberations were embodied in the following interesting report presented on the 5th of March.

"The committee have considered the important objects committed to them.

To fulfil these novel but highly interesting duties, their first impression was to ascertain the existing state of agriculture in this state, compared to that of different nations of Europe, especially England and Holland, the countries from which our ancestors emigrated from the year 1608 to 1640. Since the termination of the revolutionary war, the eastern hive has converted our extended forests into fruitful fields; and added a vast weight to our population, of hardy and enlightened yeomanry.

This increase has been so rapid, that we only begin to realize a condensed and stationary population.

Hence, it has been impossible heretofore, to adopt any general course of measures, calculated to enlighten and expand the views of our farmers, in the pursuit of a more profitable husbandry.

Although this investigation is full of useful instruction, and pregnant in results of vital importance to the present and future generations; and opens a wide field for the contemplation of philosophy, agricultural science and patriotism; and although we are persuaded there is no country on earth whose inhabitants are better informed — better fed — and who have a higher sense of self respect, and all those manly sentiments which dignify human nature — yet it is painful to add, we are at this moment in a state of absolute ignorance in the first principles of the first of sciences, as connected with chemistry.

We are also totally unacquainted with the fundamental grounds of those great modern improvements in agriculture, as it is now practised in England, and other countries of Europe.

Taking the year 1640 as an epoch which terminated the emigration from England and Holland, which forms the main basis of our population, we may reasonably conclude those emigrants brought with them the knowledge of agriculture as it existed in those countries at that period.

Their descendants in the successive generations, have tenaciously followed the footsteps of their predecessors, without daring to indulge in new experiments, or weighing well the possibility of a more productive husbandry. But how could a remedy be applied, having no central point of communication — no lamp to guide their steps — nor measures to stimulate efforts, or excite competition?

It requiring the longest life of man to acquire useful experience in agriculture, how much valuable information has been swallowed up in the grave, for the want of such a point of communication, which otherwise might have been perpetuated, the common property of mankind?

To guard hereafter against such a waste of experience, and to reach the important point in view, your committee deem it important to take a concise review of the history of agriculture in England, from an early period, to the epoch of 1640, and its progress from that year to the present time.

When Julius Cæsar invaded England, he found that people in a state of barbarism. The Romans were then the only people who possessed the true knowledge of agriculture as an art; this they introduced partially into England. The yeomanry of that country remained at a stationary point, for about eleven centuries. Then the Normans introduced some additions to the art, also many valuable farming utensils.

It was not cultivated in any manner as a science, till about fifty years previous to an emigration of twenty-one thousand people to New England, from which stock upwards of two millions of people now exist; and in one century more, this number will probably be swelled to the astonishing magnitude of upwards of twenty millions.

From 1640 to the present time, (178 years) England has continued to advance with rapid strides, in the science of agriculture; in particular, in the last fifty years, owing to the ardent efforts of philosophers and patriots, especially to the enlightened genius of Sir John Sinclair, through whose instrumentality, a national board of agriculture was established.

As we have remained nearly stationary in the same period, all their acquisitions are in consequence beyond our knowledge.

To redeem, therefore, this great waste of time and

knowledge, presents to this legislature a fair opportunity to distinguish this session in the page of our history; and your committee, with due deference, beg leave to add as their opinion, that it becomes an imperious duty to that end to adopt enlarged, vigorous and decisive measures.

The public voice calls aloud for legislative interference, to give a just direction to the current of public opinion, which is constantly manifesting in different counties, especially by an animated effort in the county of Otsego, in October last.

The committee refrain from entering the field of argument, or multiplied proofs, to carry conviction home to the minds of all, that strong and efficient measures have become indispensable.

The example in a neighboring state has demonstrated the powerful effects of exciting competition. On this result we may safely repose our confidence of success.

The committee, in reviewing the whole ground, request leave earnestly to recommend,

First, That a state agricultural society be incorporated, and that the governor of this state *ex officio* be president thereof.

Second. That a board of agriculture be established at the seat of government, to consist of a professor of agriculture and chemistry, and one member from each great district; said board to be under the superintendence of a Superintendent General of Agriculture as a distinct department, to be denominated 'the Department of Agriculture.'

Third. As soon as Agricultural societies shall have been formed, and duly organized in any county in this state, they shall be entitled to receive a just portion from 'the agricultural fund' for the purposes of annual premiums; an appropriation to be also made out of said fund for general premiums; thus while the county societies will excite a general spirit of emulation, these premiums will also excite a powerful competition between the several societies.

Should it be the sense of the Legislature to adopt these measures, the committee would further remark, that if the law should be promptly enacted. the society and board of agriculture can be organized during the sitting of the Legislature, and a course of lectures on agricultural philosophy delivered to the members.

Immediate measures will follow, to organize the county societies, so as to give a rapid excitement throughout the state early in the spring, preparatory to a general display in October next.

The board of agriculture will be the pivot on which the whole machinery will move. It will animate the whole system, and may be considered, comparatively, acting as a pendulum to a clock. Each of the county societies will revolve in their distinct orbits, and in their turn, they will stimulate the efforts, and diffuse the lights of science in every section of this state.

In this view, October next will be the most interesting period of our history; and it is reserved for the state of New York to offer to America a salutary example.

Hitherto, especially in New England, it was thought disgraceful for a gentleman of fortune to put his hands to the plough.

The example of Washington, the late chancellor Livingston, and many of our distinguished citizens, has recently given to the profession respectability.

To establish and support this splendid fabric, fraught with consequences of incalculable benefits, will require the sum of thirty thousand dollars annually; or so much thereof as may be found by the state society expedient to withdraw from the agricultural fund lying in the state treasury. To raise that sum with convenience to the community with perfect ease, and no additional expense of officers, and in a view of the correction of public morals, it is proposed to lay an addition of one half to the existing tax on tavern licenses and retailers of ardent spirits.

This tax will be peculiarly appropriate, inasmuch as the monies will return into circulation where it is collected; tending in some measure to tax intemperance to support the best interests of the community.

Again, since it is of the utmost importance that an agricultural society should be promptly established in every county in this state, no county will contribute long to the fund without participating in its fruits, and applauding the measure.

The committee, considering the sum of thirty thousand dollars adequate to give full effect to all the measures in

contemplation, have been governed by the following estimate, viz:

One half the amount added to licenses on taverns and retailers, the Comptroller estimates will produce	$30,000
One million of inhabitants, at $20 for each thousand inhabitants to be paid out in premiums, will require	$20,000
Salaries of officers — a clerk — the deputy superintendents — general premiums — contingencies — foreign and domestic correspondents — procuring implements of husbandry — seeds — plants — and supporting a laboratory, and other incidental charges, to hold in reserve, subject to the State Society, say	10,000
	$30,000

The sum of twenty thousand dollars, being appropriated for all the counties in this state, for premiums on agriculture and domestic manufactures — equal to about twenty dollars on each thousand inhabitants: the following apportionment is predicated on that calculation, with some trivial variations in reference to cities and new counties, viz:

Subject to be corrected by the Board of Agriculture.

Albany county	$700	Greene	$400
Allegany	150	Herkimer	400
Broome	200	Jefferson	400
Cayuga	700	Kings	150
Chautauqua	100	Lewis	200
Chenango county	400	Madison	500
Clinton	250	Montgomery	800
Columbia	600	New York	1300
Cortland	250	Oneida	800
Delaware	400	Onondaga county	600
Dutchess	800	Ontario	1000
Essex	250	Orange	600
Franklin	200	Otsego	800
Genesee	500	Putnam	200

Queens		Steuben	$300
Rensselaer	700	Suffolk	400
Richmond	150	Sullivan	200
Rockland	200	Tioga	300
Saratoga	600	Ulster	500
Schenectady	200	Warren	200
Schoharie	400	Washington	700
Seneca	400	Westchester	500
St. Lawrence	200		

Should the societies of any two adjoining counties state to the Board of Agriculture, a wish to consolidate said counties, or parts of counties, into agricultural districts, measures to be adopted in conformity thereto.

To embrace all the important objects in contemplation, and to bring them fully into the view of the Legislature, the committee ask leave to present a bill."

The committee presented a bill "to incorporate a state agricultural society for the promotion of agriculture and manufactures," but it was not passed.

1819. JANUARY. LEGISLATURE, FORTY-SECOND SESSION.

DE WITT CLINTON, Governor.

An act passed in 1818, chap. 228, changed the date of the annual meeting of the Legislature from the last Tuesday of January, to the first Tuesday of the same month. This statutory provision was incorporated in the Constitution of 1821, art. 1, sec. 14, by which the first Tuesday of January was fixed as the day for the opening of the annual session of the Legislature. This provision was continued in the Constitution of 1846, art. 10, sec. 6; but by the Constitution of 1894, art. 10, sec. 6, the date was changed to the first Wednesday in January.

The Legislature met on the 5th of January, 1819, pur-

suant to the foregoing statute, and the next day the Governor delivered the following:

OPENING SPEECH.

Gentlemen of the Senate and of the Assembly.— A meeting of the representatives of a free people for the purposes of legislation, is, at all times, an event interesting to the community and honorable to the human character; but its importance is greatly enhanced, when they are called upon, by the peculiar state of the country, to deliberate and to decide upon subjects intimately associated with its prosperity and its honor, and with the cardinal interests of all future generations. Under these circumstances you have now assembled, and fortunately at a time the most propitious to patriotic views, to wise deliberations and to energetic decisions. At no period, within my recollection, has the public mind been in a state of greater tranquillity, more exempt from the impulses of ambition, and the agitation of faction, and more accessible to the influence of reason and of patriotism.

Our country is in a state of profound peace, which promises a long duration, and even the civilized nations of the eastern hemisphere have sheathed the desolating sword. An enlightened and exalted spirit predominates, friendly to the primary interests of the state; to the promotion of agriculture, commerce, and the arts; to the encouragement of literature and science, of schools, academies, colleges, universities and learned societies; to the advancement of those great internal communications which form the basis of individual and public wealth, and to the elevation of our national character, by works of public and permanent utility, and by acts which consult the welfare and the dignity of the human race. In addition to these distinguished advantages, we have enjoyed the blessings of a healthy season and of an abundant harvest; our seminaries of instruction have increased in usefulness; our population

is augmenting beyond all former experience; justice is administered with purity and ability; the majesty of the laws is respected; the influence of religion and morality is spreading: and, after fully estimating those afflictions, which must be experienced by all human beings, and those evils which are incident to all human institutions, it is not too much to say that we never had more reason to be grateful to the Almighty Dispenser of all good. At a period so auspicious, we cannot, therefore, anticipate disappointment from your deliberations. As the faithful representatives of the people, possessing their confidence, you will not hesitate to obey their voice. And in discharging an important duty assigned to me by the constitution, I shall exhibit to you without reserve, but with the most profound respect, my views of the policy which ought to be pursued; of the evils which ought to be corrected, and of the measures which ought to be adopted.

The progress of our internal improvements has equalled our most sanguine expectations. In the course of the next season the Northern Canal, extending from Whitehall at the head of Lake Champlain to Fort Edward, on the Hudson River, a distance of 23 miles, and the whole of the middle section of the Western canal, comprising 94 miles, and reaching from the Seneca River to the Mohawk river at Utica, will be completed and in a navigable state. Thus, in less than two and a half years, canals to the extent of one hundred and seventeen miles will be perfected; and, as the eastern and western sections of the canal from Lake Erie to Hudson River will be about two hundred and sixty miles, it is evident that, by the application of similar means and the exertion of similar powers. the whole of this internal navigation can be finished in six years from the present period, including also the improvements essential on Hudson River, from Fort Edward to the head of sloop navigation. It is satisfactory also to know that, so far as

we can judge from the lights of experience, the actual expenses have not exceeded the estimates of the commissioners; and, with all the advantages arising from increased knowledge, from improved skill and from circumspect experience, we are firmly persuaded, that the aggregate expense will fall short of the total estimate. It is also a most gratifying consideration to find, from the progressive and flourishing state of the fund appropriated to this object the whole undertaking can be completed without providing any auxiliary resources, and without imposing any taxes on the community. From the commencement of the next year, the finished portions of the canals will be in a state productive of considerable revenue.

By the act respecting navigable communications between the great western and northern lakes and the Atlantic ocean, passed the 15th of April, 1817, the commissioners are only empowered to make canals between the Mohawk and Seneca rivers, and between Lake Champlain and the Hudson River. Possessing, however, under that act and the act to provide for the improvement of the internal navigation of the state, passed the 17th April, 1816, authority to make the necessary surveys and to lay out the proper routes for the whole of the Western and Northern canals, they have not overlooked the latter, although their attention has been principally devoted to the former object. By that initiatory arrangement, it was obviously the intention of the legislature to bring the calculations of the commissioners to the touchstone of experiment, and to determine whether the resources of the state are adequate to the whole operation.

This trial has taken place in the most satisfactory manner, and there cannot exist a doubt of the feasibility of the work or of the ability of the state. It is therefore highly expedient that a law should be passed, during the present session, authorizing the completion of the whole work as

soon as possible.[1] In the course of this year the routes can be then so far definitively settled as to enable the formation of contracts to take effect in the spring of 1820, by which means a whole year will be saved to the operation, and the state will have the benefit of experienced contractors, who might, under a different state of things, be employed in other undertakings. And, when we contemplate the immense benefits which will be derived from the consequent promotion of agriculture, manufactures and commerce; from the acquisition of revenue; from the establishment of character and from the consolidation of the federal union, we must feel ourselves impelled by the most commanding motives, to proceed in our honorable career, by perfecting with all possible expedition this inland navigation.

At the present period a ton of commodities can be conveyed from Buffalo to Albany by land for $100, and to Montreal, principally by water, for $25. Hence it is obvious, that the whole of the vast region to the west of that flourishing village, and the greater part of the extensive and fertile country east of it, are prevented from sending their productions to our commercial emporium and that they must either resort to the precarious markets of Canada, or to places more distant, less accessible or less advantageous. When the great Western Canal is finished, the expense of transportation from Buffalo to Albany will not exceed $10 a ton. Almost the whole of the ascending trade of the west will be derived from the city of New York, and a great portion of the descending products will accumulate in that important depot. If half a million of tons

1 Chap. 105, passed April 7, provided for the continuance and completion of the work on the great canals, intended to connect the Hudson River with Lake Erie and Lake Champlain. The canal commissioners were authorized to use annually $600,000 for this purpose, and to borrow that amount if necessary. Canal tolls were to be established as soon as specified portions of the canals could be used for purposes of transportation. The act also contained detailed provisions relative to canal administration.

are, at the present period transported on the waters of the Hudson River, it is reasonable to suppose that the time is not distant, when the commodities conveyed on the canals will be equal in amount. A small transit duty will consequently produce an immense income, applicable to the speedy extinguishment of the debt contracted for the canals, and to the prosecution of other important improvements.

In these works, then, we behold the operation of a powerful engine of finance, and of a prolific source of revenue.

It is certainly more important that the productive classes of society should have good markets out of the state, than that they should be exclusively confined to indifferent or fluctuating markets in it. In the former case, wealth is diffused over the whole country, while in the latter, it is limited to a few great towns. A wise government ought to encourage communications with those places, where the farmer and manufacturer can sell at the highest, and buy at the lowest price. And, as the acquisition of many markets increases the chance of good ones, and diminishes, in many instances, the expenses of transportation, and guards against the pernicious fluctuations of price, I look forward with pleasure to the speedy arrival of the time when the state will be able to improve the navigation of the Susquehannah, the Allegany, the Genesee and St. Lawrence,— to assist in connecting the waters of the great lakes and of the Mississippi; to form a junction between the Western Canal and lake Ontario by the Oswego river, and to promote the laudable intention of Pennsylvania to unite the Seneca lake with the head waters of the Susquehannah.

But there are other and more important considerations connected with this subject which enter into the very essence of our liberty and prosperity. The gloomy and comfortless doctrine, which supposes man incapable of free government, necessarily implies that he must be subject to a bad one, because it pre-supposes his utter incompetence to govern either others or himself. In hereditary and elect-

ive monarchies, and indeed in all governments not founded on the broad basis of equal representation, the actual ruler is the prime minister of the day, elected by the prince from time to time to govern the country. Whether this right of choosing be vested in an hereditary elector, or, in an elector for life, appointed by a diet or conclave, or, in an elector chosen by an army of janisaries, it is clear that it is a faint recognition of the representative principle transferred from the body of the people to an irresponsible individual totally unfit from his situation and education, to exercise it with patriotism and intelligence. Who then can doubt the superior excellence of a free government, its entire accordance with the dignity of man, and its almost exclusive devotedness to his happiness? But in the United States our liberty and our union are inseparably connected. A dismemberment of the republic into separate confederacies would necessarily produce the jealous circumspection and hostile preparation of bordering states; large standing armies would immediately be raised; unceasing and vindictive wars would follow, and a military despotism would reign triumphant on the ruins of civil liberty. A dissolution of the union may therefore be considered the natural death of our free government. And to avert this awful calamity, all local prejudices and geographical distinctions should be discarded, the people should be habituated to frequent intercourse and beneficial inter-communication, and the whole republic ought to be bound together by the golden ties of commerce and the adamantine chains of interest. When the Western Canal is finished and a communication is formed between Lake Michigan and the Illinois River, or between the Ohio and the waters of lake Erie, the greater part of the United States will form one vast island, susceptible of circumnavigation to the extent of many thousand miles. The most distant parts of the confederacy will then be in a state of approximation, and the distinctions of eastern and western, of southern and northern interests,

will be entirely prostrated. To be instrumental in producing so much good, by increasing the stock of human happiness; by establishing the perpetuity of free government, and by extending the empire of improvement, of knowledge, of refinement and of religion, is an ambition worthy of a free people. The most exalted reputation is that which arises from the dispensation of happiness to our fellow creatures, and that conduct is most acceptable to God which is most beneficial to man. Character is as important to states as to individuals, and the glory of a republic founded on the promotion of the general good, is the common property of all its citizens.

Important, however, as these improvements are, yet they ought not to engross all our attention nor command all our resources. There are other objects of primary consequence which demand the munificence of the government, and I am happy to say that ample means are at our disposal.

The fund appropriated for the benefit of common schools, consists of a million of dollars, invested in bank stock, and in bonds and mortgages, and about 80,000 acres of land. Heretofore, $60,000 have been annually divided among the common schools, and at the present period $70,000 may be distributed; but it is supposed that this cannot be done with propriety, in consequence of the varying and increasing state of our population, until a new census is taken. There is also a considerable fund denominated the literature fund; and the Regents of the University distributed, during the last year, among several academies, the sum of $4000, which they will be able to continue.[2]

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[2] Chap. 161, passed April 12, created the office of superintendent of common schools, to be appointed by the Council of Appointment. The act also provided for the annual distribution of $70,000 from the common school fund, which might be increased to $80,000 if the income of the fund amounted to that sum. Commissioners and inspectors of schools were to be chosen in each town. The act was substantially a revision of all the laws relating to common schools.

Without adverting to a million of acres of unappropriated land, some of which is very valuable, and the whole of which is competent to the extinguishment of the public debt, it is sufficient to observe that the surplus of ordinary revenue beyond the current demands of government for the present year will be about $90,000, which will be augmented by the payment of the arrearages of taxes, $70,000, and also by the payment of the debt due from the United States; so that, without taking into view large sums of money which may come into the treasury from other sources, there will be in all probability, $300,000 applicable to objects of public utility.

The legislature having deemed it expedient to apply the avails of certain lotteries to the encouragement of education, and other beneficial purposes, it was not without extreme regret that I have observed the credit of those institutions seriously impaired. As the payment of prizes is guaranteed by the state, and is not limited as to time, it is hoped that the public confidence will be completely restored under the administration of the present managers. In order to promote this desirable end, and to mitigate, as far as possible, the demoralizing effects of lotteries, (which can only be accomplished by rapid drawing) and to guard against fraud and negligence, I have caused certain instructions to be communicated to the managers, a copy of which will be laid before you; and it will be expedient for you to protect the lotteries against the control of contractors, by means which will be suggested, and which will be efficacious.[3]

Chap. 212, passed April 13, contained provisions intended to increase and strengthen the common school fund, and provision was made for a graduated increase in the distribution of the proceeds of the fund.

By chap. 222, passed April 13, one-half of the sums for quit rents or commutation of quit rents was appropriated to the literature fund, and one-half to the common school fund, and such sums were to be invested in canal stock.

[3] Chap. 206, passed April 13, declared an unauthorized lottery a common and public nuisance, and regulated the administration of public lotteries.

Having on a former occasion solicited the attention of the legislature to the encouragement of agriculture, I have to express my regret at the failure of a measure generally admitted to be proper and expedient, on account of a difference of opinion as to its modification. That this important pursuit is the foundation of wealth, power and prosperity; that it requires the energies of the mind as well as the labors of the body; that it demands the light of science to guide its progress, and the munificence of government to accelerate its movements, to extend its usefulness, and to diffuse its blessings, are positions which cannot be controverted.

Why should the countenance of the state be required for the encouragement of the arts and sciences in general, and agriculture, the most important of all arts, the most useful of all sciences, be alone proscribed from the participation in its bounty?

A spirit favorable to this great improvement is rising and spreading in all directions, and wherever it is experienced it carries in its train extensive and innumerable blessings. The societies already instituted have, by stimulating emulation and diffusing information, effected great good; and if they be assisted in their useful and honorable career, by pecuniary appropriations, and if a board of agriculture, connected with a course of appropriate studies, be instituted, we have every reason to believe that the most beneficial consequences will result in multiplying the products of the country; in increasing the value and ameliorating the quality of our commodities; in preventing the undue augmentation of the learned professions, and in maintaining the equilibrium of society, by restoring the most important interest and the most numerous calling to its merited intellectual rank. The Board of Agriculture ought also to be invested with authority to make a statistical survey of the state, and to obtain periodical returns of births, marriages, and deaths. A knowledge of our re-

sources, of our animal, vegetable, and mineral productions, of the condition of our agriculture, manufactures, and trade, and, generally speaking, complete information of the state of the country with a view to its melioration, would effect great improvements in the practical pursuits of life, and would open new and important views in the science of political philosophy; a science of all others the most interesting and the least understood. The special designation of a fund for these objects, either by some of the expedients proposed at the last session, or by others which can be easily devised, is required by every consideration of public spirit and public duty.[4]

In connection with this subject it is proper to remark, that the reputation of our flour is at such a low ebb in the foreign markets, that it sells from $1.50 to $2 less per barrel than that exported from Philadelphia and Baltimore. This cannot be imputed to the inferiority of the seed, to the sterility of the soil, or to its natural inaptitude for such productions. On the contrary there is reason to believe that wheat is one of our indigenous plants, and we are certain that our soil and our climate are admirably adapted for its growth. The fault must be with the farmer, the manufacturer, or inspector. The value of a bushel of wheat for the last ten years has averaged from one and a half to

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[4] Chap. 107, passed April 7, appropriated $10,000 annually for two years for the promotion of agriculture and family domestic manufactures, and the amount was apportioned among the several counties. Out of the sum thus apportioned to any county, the comptroller was directed to pay to any agricultural society therein, a sum equal to that raised in such society by voluntary contributions. The act also contained provisions relating to the organization of agricultural societies, and the distribution of premiums for agricultural products. A state board of agriculture was created to be composed of the presidents of the several local agricultural societies, or of delegates therefrom. The board was authorized to receive and examine all agricultural reports, and publish a volume containing such reports and essays as the board might select for that purpose. The act also appropriated $1,000 to be used by the state board in the distribution of seeds and for other purposes authorized by the act.

two dollars, and the flour inspected in the port of New York is about 300,000 barrels a year. The immense loss sustained by the bad state of this staple commodity requires an efficient remedy. The chamber of commerce of the city of New York have instituted an inquiry on this subject, and their commendable zeal will, I am persuaded, prove honorable to their institution, and beneficial to their country.[5]

As the prosperity of agriculture is essentially connected with easy and cheap means of transportation, the importance of good communications, by land as well as by water, cannot escape your attention. All roads leading to navigable rivers and lakes, to cities, towns and villages; to manufacturing establishments, and depositories of produce and merchandise, are entitled to your countenance; and in places of a different description, where a thin and commencing population prevents the extensive and useful application of individual exertion, there is every inducement on your part to encourage the growth and settlement of the country by opening the means of communication. The improvement of old, and the creation of new roads, is at all times an incumbent duty, and a beneficial exercise of power. It cannot have escaped your observation, that in many instances the worst highways are in the most ancient and opulent settlements; that several turnpikes have injured instead of facilitated intercourse, and that the laws on this subject do not reach the sources of the evil. In our zeal, however, to establish new and good roads, in different sections of the country, let us not transcend the limits of private right and public utility. It is a novel, and to say the

[5] The Assembly committee which had this subject under consideration made a report expressing the opinion that the situation as to New York flour presented by the Governor was due in part to the manner in which the wheat was ground, and also in part because sufficient care had not been used in selecting seed wheat. The committee thought the only remedy was to enact legislation requiring more careful selection of seed, and a bill was introduced for this purpose, but was not passed.

least, a questionable exercise of authority, to coerce contributions to the stock of turnpike companies; and it is apprehended that cases have occurred where meritorious settlers and non-resident proprietors have grievously suffered by the exaction of assessments to open communications artfully contrived for the benefit of individuals, without any view to the public accommodation.[6]

The provision for elementary instruction is so liberal that no further pecuniary assistance is required, but your interposition in other respects would be attended with decided advantages. The most durable impressions are derived from the first stages of education. Ignorant and vicious preceptors, and injudicious and ill-arranged systems of education, must have a most pernicious influence upon the habits, manners, morals, and minds of our youth, and may vitiate their conduct through life; and it is a subject no less of regret than astonishment, that, beyond initiatory instruction the education of the female sex has been utterly excluded from the contemplation of our laws.[7] The expediency of instructing teachers in the lancasterian system, and of promoting its general adoption, has heretofore been intimated to the legislature.

When it is considered that education is the guardian of liberty and bulwark of morality, and that knowledge and virtue are, generally speaking, inseparable companions, and are in the moral, what light and heat are in the natural world — the illuminating and vivifying principles; I trust that I need no apology in soliciting an extension of your patronage to the higher seminaries of education.

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[6] Chap. 127, passed April 9, amended existing highway laws relative to procedure, and the description of property in certain cases subject to highway taxation. The general turnpike act was also amended by chap. 236, passed April 13. Several statutes were passed which provided for laying out and constructing highways in different parts of the state.

[7] A female academy in the village of Waterford was incorporated by chap. 52, passed March 19. The Wesleyan Seminary for youth of both sexes was incorporated by chap. 198, passed April 13; it was located in the city of New York.

In the year 1814, a grant of $200,000 was made to Union College; of $40,000 to Hamilton, and of the Botanic Garden on the island of New York to Columbia College, on condition that the establishment be removed to that place within twelve years from the time of the donation. It was undoubtedly intended that the grant to Columbia College should be substantial and beneficial, but it was fettered with a condition under the mistaken impression that a removal of the institution would be expedient. The operation of this change of place would be the conversion of a city, into a country college, and a consequent exclusion of the youth of the city of New York from its benefits, unless they incurred great and unnecessary expense. And as many persons prefer the education of their children in cities, it is unquestionably best that Columbia College should continue in its present position, in order that all young men of the state may be accommodated according to the views of their parents. A compliance with the conditions of the grant ought therefore not to be expected; and it is hoped that the legislature will look with a benign eye upon this ancient and most excellent seminary, and consent to extend its blessings by the substitution of an equivalent donation.[8]

Nor ought the interests of the other colleges to be overlooked. The character of Union College cannot be increased by any eulogium from this place. And the infant establishment of Hamilton, rising into usefulness and reputation with rapid strides, under the guidance of distinguished men, not only requires but deserves the bounty of the state. Having during the last year recommended to your patronage the Colleges of Physicians and Surgeons, and the societies devoted to literature, science, and the arts.

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[8] Relief to Columbia College was granted by chap. 19, passed February 19, which repealed the provisions of the act of 1814, which required the removal of the college to the site of the Botanic garden therein mentioned. The new act appropriated $10,000 to the college to be used for general purposes.

I have only to say that these institutions continue to merit by their indefatigable activity, well directed industry and distinguished knowledge, the high character then ascribed to them, and that, in every respect, they are entitled to the public munificence.[9]

Among the numerous and interesting objects which have experienced the benevolence of individuals and the countenance of the government, it is pleasing to observe that the interests of the dumb and the insane have not been overlooked; two unfortunate descriptions of our fellow creatures shut out from the blessings of social communion, and entitled to our deepest sympathy.

The liberal grant of $10,000 a year to the governors of the New York Hospital, has enabled them to erect a most spacious and accommodating asylum for lunatics, about seven miles from the city, and on the island of New York; and the application of this fund has been so judiciously directed by its benevolent administrators, that the contemplated edifices and accommodations will be completed during the next season, and without the existence of any debt after the expiration of fifteen years.

In April, 1817, the New York Institution for the Instruction of the Deaf and Dumb was incorporated, and it now contains thirty-two persons in a state of rapid improvement, communicating ideas by signs and vocal sounds, and favored with able and excellent teachers, who by a combination of the French and English systems of tuition, conceived with singular ingenuity and executed with admirable felicity, have deserved well of the friends of humanity. I cherish the fullest confidence that you will take this interesting establishment under your special protection, and that your munificence will only be exceeded by its merits.

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[9] The medical law was amended by chap. 237, passed April 13, authorizing medical societies to collect an annual fee of $1 from each member, to be used for general purposes, and also imposing additional conditions on applicants for medical licenses

A liberal portion of the school fund applicable to the city of New York is one of the many means by which its exigencies may be supplied.[10]

In attending to the general interests of the community, let us not overlook the concerns of two unfortunate races of men, who will be forever insulated from the great body of the people, by uncontrollable circumstances, and who ought to receive our protection and benevolence. I refer to the Indian and African population.

The erratic and migratory spirit, which marks the character of all savage nations, has been cherished in our Indians, by persons either interested in removing them from their territory, or who feel an anxiety to protect them from the contaminating and extirpating contiguity of a white population. On the other hand, this propensity has been counteracted by individuals who either derive emolument from their continuance, or, who, governed by the purest benevolence, are anxious to bring them within the pale of civilization and christianity. This collision has produced a state of continual uneasiness and agitation among this unfortunate people. As experience has almost uniformly demonstrated that their diminution in number, and recession from virtue, have been in proportion to their propinquity to a civilized people, I have never ceased to believe that their departure is essential to their preservation. But in my communications with them, I have thought it proper, until the sense of the legislature is expressed, to abstain from urging this measure, leaving it to their own volition, without pressing upon them the influence of the government, and assuring them that, in any alternative,

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[10] Chap. 238, passed April 13, appropriated $10,000 for the institution for the instruction of the deaf and dumb, no part of which was to be used for purchase of land or the erection of buildings, and the same act required the trustees to present to the next Legislature a detailed report concerning the affairs of the institution.

they shall experience the favor and protection of the state, and its best exertions for their happiness.[11]

In pursuance of a law of last session, I authorized measures to be taken for the erection of a church in the Oneida territory, which were gratuitously executed by two distinguished gentlemen of Oneida county. The first christian party of Indians agreed to increase the sum of four thou-

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[11] A committee of the Assembly presented an interesting report on the 4th of March, in which the condition of the Indians was considered at some length, and from various points of view. According to this report, the Indian population in the State was then as follows:

	Population.	
Reservation at Buffalo	686	Senecas.
do Tonawanda	365	do
do Cattaraugus	389	do
do Allegany River	597	do
do at Genesee River	456	do
Oil Spring reservation		do
Tuscarora	314	do
Oneida	1,031	Oneidas.
Onondaga	300	Onondaga.
Stockbridge	438	Stockbridge.
St. Regis	400	St. Regis.
Total	4,976	

The same statement shows that the Indian reservations comprised in the aggregate 271,323 acres. The committee favored a change of policy in relation to Indian affairs, and accordingly proposed the following concurrent resolution:

"*Resolved*, That his Excellency the Governor be requested to co-operate with the government of the United States in such measures as may be deemed most advisable, in order, as far as it may be found practicable, to induce the several Indian tribes within this state to concentrate themselves in some suitable situation, under such provisions, and subject to such regulations as may be judged most effectual to secure to them the best means of protection and instruction in piety, and agriculture, and gradually to extend to them the benefits of civilization; and that he is authorized and requested to take such measures, either with or without the co-operation of the government of the United States."

The Senate did not concur.

sand dollars heretofore appropriated by the second christian party, by adding a thousand dollars from their annuity; and both sections having also united in designating the site of the edifice, it is to be hoped, that the feuds which have heretofore separated them, will be extinguished by the mild influence and benign spirit of christianity.

During the continuance of this people among us, it will certainly be our duty to protect them against frauds and intrusions, and to make such arrangements as may best promote their welfare. In the partial sales which frequently take place of their territory, it might be useful to reserve certain portions for advancing their improvement in the arts of civilized life; and it may essentially accommodate them, if in cases of emergency, particularly of scarcity, the treasury were authorized to pay their annuities in advance. It is the opinion of many pious and benevolent men, who have directed their attention to this subject, that the condition of the Indians might be immeasurably ameliorated, by the establishment of a board of commissioners, selected from the different religious societies, who have manifested an interest for their welfare, and with authority to take into consideration, all matters relating to the Indians in this state; to investigate their situation and wants; to redress their grievances; to diffuse among them education, agriculture, morality and religion, and to recommend to the legislature the adoption of such measures as shall be most conducive to the attainment of these desirable objects.

Our code in relation to the African population, has been arranged with a two-fold view; as a requirement of humanity to prevent the separation of near relations, and their being conveyed in a state of slavery to distant lands, by prohibiting the exportation of slaves and servants; and as a dictate of policy to preclude the increase of an unwelcome population, by interdicting their importation. A steady adherence to this system will, in course of time,

have the intended effect; and it may be proper to fortify the existing provisions on account of the artful evasions which are practised to procure the exportation of servants. The strong propensity of this race to congregate in our great towns, where they are peculiarly exposed to the contagion of bad example, and the degraded light in which they are contemplated by public opinion, must not lead us to expect from them many exhibitions of extraordinary virtues or talents. It is due, however, to justice, to say, that the establishment of schools and churches, for their benefit, under the auspices of benevolent men, have had a benign influence in the improvement of their minds and their morals; and it is believed that the benevolence of the state will never be withheld from the encouragement of such laudable undertakings.[12]

Although the militia code enacted at the last session is in some instances liable to objections, and requires your correcting interposition, yet on the whole, it has been productive of salutary effects. In order to accommodate, as far as practicable, our arrangement to the most approved system, I constituted two brigades into a division, and distributed the whole militia into twenty-five divisions, independently of those of artillery and cavalry. The generals of division, who were in many cases before mere nominal officers, on account of the extended sphere of their commands, are now enabled, without essential sacrifices, to direct their attention to their duties, and by the exertion of their experience and skill, to promote the knowledge of the military art. A disposition to improve in tactics and discipline has generally manifested itself during the last year, in a manner and to an extent which reflects honor on the militia. Fully persuaded that you justly appreciate this bulwark of national safety, and this palla-

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12 Chap. 141, passed April 9, was intended to impose additional restrictions on the exportation of slaves and servants.

dium of free states, I consider it unnecessary to press the importance of its encouragement. If the physical force of the state were properly instructed in the military art, it would form an impregnable defence of the country, and, I do not despair to see the accomplishment of this desirable object, by the establishment of military schools, and by the extension of beneficial immunities. An exemption from personal taxation, either wholly, or to a limited amount, in favor of those portions of militia who uniform themselves in fabrics of American manufacture, would, I am persuaded, induce the whole body to array themselves in a military dress; and by these means, that most useful class of the community employed in manufactures would be materially benefitted. On the subject of the medical staff of the militia, I shall direct to be laid before you an able and luminous report from the distinguished gentleman who presides over that important department.[13]

The embarrassments arising from the disordered state of our currency have increased, instead of diminishing, since I had the honor to address the legislature on the subject. The vast excess of paper above metallic money, at least treble in amount — and the constant demand for the latter have produced a state of alarm and anxiety and have created great distress, not only in the mercantile cities, but in all the departments of productive industry; and unless efficient preventives are adopted and suitable remedies applied, the evil will be in a state of progressive augmentation. The supplies of the precious metals have decreased, in consequence of the agitations in Spanish America, and our metallic money is continually diminishing by its conversion into articles of luxury and accommodation, and by vast exportations to Asia. On the other hand, paper money is augmenting, by the improvident conduct of the governments, in the creation of banking institutions;

[13] Chap. 219, passed April 13, was an amendatory act containing numerous provisions relating to the militia.

for every new bank will increase the quantity of paper money by a forced circulation of its notes. A proposition to invest banks with the power of coining money would have no advocates, and yet it might not be so pernicious as the authority already granted of emitting bank notes; for, in the former case, the money would have intrinsic value, and its emission would be limited by the ability of the banks to procure the precious metals; and in the other, its value would depend upon the mode in which these institutions were established and administered, and the extent of their issues might be their ability to obtain the engraving materials. To arrest the progress of evils so alarming will require the cordial and energetic co-operation of the people and their governments. If we return to the observance of that economy and simplicity most becoming the dignity of freemen, we may confidently calculate upon being rescued from this unenviable situation. Having uniformly opposed the multiplication of banks, I now only express opinions formed for many years after mature deliberation, and which are every day sanctioned by the progress of time and the voice of experience.[14]

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[14] The Senate committee which had under consideration this part of the Governor's speech relative to the currency, presented, on the 26th of January, an interesting report which contained a review of the financial situation. The committee expressed the opinion that the causes of the embarrassed state of the country were fourfold, namely,

1. "The decrease of the precious metals in consequence of the agitations in Spanish America.

2. The conversion of our metallic money into articles of luxury and accommodation.

3. The vast exportation of specie to Asia.

4. The improvident increase of banking institutions."

The first cause was beyond the control of the Legislature, and the second was practically so, for the reason that except in extraordinary emergencies, the Legislature would not presume to dictate the uses which the people might make of their own property. The third cause, the exportation of specie to Asia, required the interposition of the general government, and was beyond the control of a state legislature.

Discussing the increase of banks, the committee said that charters had been obtained far beyond the real necessities of the people, and banks have

The state of our penitentiaries requires your serious consideration, and must excite your sincere regret. As the only legitimate object of punishment is to prevent crime, by reforming the offender, by incapacitating him from perpetrating future mischief or by deterring others by the infliction; and as none of these consequences have resulted, the failure must be imputed to the system, its defective arrangement, or improper administration. As it has succeeded in other places, and is strongly recommended by the voice of reason, as well as humanity, the fault must be ascribed to other causes than to the system itself. In order to reform an offender, he must be placed beyond the influence of bad advice and example, his mind and his passions must be disciplined by intellectual, moral and religious instruction; and he must be subjected to privations, to labor and to solitude; and in order that his punishment may have effect on the conduct of others, it is equally necessary that it should be certain, and that its realities should be unquestionable. On the present plan, there is no classification of age or crime. Each apartment is calculated for about eighteen persons. All descriptions of convicts are crowded together without distinction — the young and the old — the healthy and the unhealthy — the novice and the adept in crime; and here the hardened offender boasts of his vices, unfolds his expedients, and completely eradicates every

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been located in parts of the country, having no business adequate to that legitimate aid and support which their existence requires. The committee submitted a statement showing the number of banks which had been incorporated, the amount of authorized capital, and the public stocks in which investments had been made. The whole number of banks was 33, with an authorized capital of $24,922,800. Of this amount, $535,800 had been invested in state stock general fund; $231,000 common school fund stock; $210,000 in stock of colleges; and $20,000 in academy stock; in all $996,800. The committee estimated the paper issued by the banks at $12,500,000, and that the available specie capital of the state did not exceed $2,000,000.

The committee recommended a resolution declaring it impolitic and inexpedient to grant any new charters at that session of the Legislature.

No general bank charter was granted at this session, but chap. 62, passed March 26, incorporated a bank for savings in the city of New York.

remaining impression of rectitude. Such is the perversity of human nature that a man, destitute of virtue, will be vain of his vices, and as a spirit of proselytism prevails among the wicked as well as the good, our penitentiaries become schools of turpitude, in which profligacy is inculcated in its most odious forms and in all its terrible enormities.

Offenders having thus the amusements of society, being exempt from grievous privations and severe labor, and entertaining a persuasion that the increasing influx into the prison must soon release them from confinement, view their punishment without terror, and return into society with corrupt principles, with depraved feelings, and with every disposition to renew their crimes. Hence we sometimes see offenders imprisoned on a third conviction; and frequently, the day of their release by pardon, or expiration of sentence, witnesses their apprehension for new offences.

In consequence of the crowded state of the prisons the executive is reduced to this dilemma, either to exercise the pardoning power to a pernicious extent, or to witness the destruction of the whole penitentiary system. He is also frequently deceived by misrepresentation; and pardons are sometimes granted to the worst on the recommendation of the best men in the community, who, in listening to their sympathy lose sight of their patriotism, and who submit themselves to the influence of a sickly and fastidious humanity, which confines its view to the offender, and does not perceive in his punishment, the establishment of the general security.

Another effect is inevitable. Instead of rendering labor productive, and maintaining the establishment without expense to the state, appropriations for its support are annually called for, and are in a state of constant accumulation.

In November last there were in the state prison at New York about 603 convicts, of whom 410 were convicted of

grand larceny, and 86 for offences relating to the counterfeiting and uttering bank notes.

There were, at that time, in the State Prison at Auburn, about 131 convicts, of whom 50 were confined for grand larceny, and 36 for counterfeiting and passing bank notes.

The total number in both prisons was 734, and the offenders guilty of grand larceny, and counterfeiting and uttering bank notes, were 582, leaving only 152 convicted of other crimes.

As one main source of the evil is the inordinate number of prisoners, an efficacious remedy might be administered by reducing the number of those confined for grand larceny, and offences against banks.

If solitary cells for the punishment of offenders below the degree of grand larceny were established in the counties; and if stealing, below the value of fifty dollars were considered petit larceny only, it is believed that our penitentiaries would be relieved from the great crowd which destroys their usefulness.[15]

A law was passed in Lower Canada in 1811, providing against counterfeiting the bank paper of other countries, and against making the materials for that purpose, which renders the offenders liable to punishment by imprisonment, whipping and the pillory. Notwithstanding that statute, and the good disposition of that government to suppress the crime, it is certain that the counterfeiting of our bank paper is principally carried on in a remote part of that country, at a distance from the coercion of the magistracy.

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[15] By chap. 83, passed April 2, convicts who violated prison discipline might be whipped, using not more than 39 lashes, or confined in solitary cells on bread and water, or put in irons or stocks. Women were exempt from the punishment of whipping. The same act authorized the employment of convicts on public roads in the county where the prison was located.

The Assembly committee which considered this part of the Governor's speech recommended and submitted a proposed penal code, intended to reduce into one statute all the laws relating to crimes and their punishment. The bill was not passed.

Offenders of this description may be classed as follows:

1st. The engravers of plates, makers of paper, and signers of notes, who generally reside out of our jurisdiction.

2d. Messengers, who are constantly passing from various parts of the country to the seat of counterfeiting, to obtain spurious money and convey it to places of deposit.

3d. Those who keep places of deposit, generally in the vicinity of large towns, and who deliver the bad notes to others to pass.

4th. Utterers of counterfeit money.

As these crimes are of different enormity, they ought to be subject to correspondent punishments. And if the counterfeiters, and the proprietors of the depositories were treated with the utmost severity, it is believed that these offences would be much diminished.

I shall cause the statute of Lower Canada to be laid before you and if a similar act were passed in this state, it might facilitate such arrangements between the two governments as would effectually crush the evil in its incipient stages.

It is essential that our prisons should be so constructed as to subject convicts to complete and constant inspection. Each offender should have a separate dormitory. And as in the day time, the prisoners would be employed in labor and under the eye of the keepers prevented from speaking to each other, and be in the night time in a state of insulation, punishment would be appalling, and cleanliness, order and regularity would predominate; and, as no conspiracies could be formed, no riots or insurrections would occur, and no military guard would be required. A multiplicity of pardons would be rendered unnecessary by the improved condition of the prisons; and the prerogative of mercy might be restrained within salutary limits, by rendering it the duty of the district attorneys to transmit, after the adjournment of every criminal court, a detailed statement of the case of every convict to the executive, for his information.

In the course of the last year a serious insurrection took place in the state prison at New York, and at various times a refractory spirit has been manifested, injurious to discipline, destructive of the public property, and subversive of the very ends of the establishment. This dangerous spirit ought to be crushed, by the infliction of exemplary punishment; and the inspectors ought to be expressly armed with power to compel obedience, in defiance of all consequences. In considering these subjects, there are several minor arrangements which may be suggested as proper. In case no contract can be made for the supply of the state prison, or, in case of disadvantageous offers, a discretionary power for obtaining supplies ought to be vested in the inspectors. No authority has been given for disciplining the militia guard attached to the state prison in New York. The inspectors of the two penitentiaries hold their offices under distinct authorities, and it is difficult to discover any good reason for the discrepancy. When revising and perfecting this code, it would be advisable to combine it in one statute.[a]

There is no question but that if the laudable efforts of the societies instituted in various parts of the country for the suppression of vice, and the promotion of morality, were enforced by additional and powerful sanctions, many of the crimes which fill our prisons with unhappy offenders, would not be perpetrated. In the resorts of gambling, drunkenness, and prostitution, we must look for the sources of those crimes, which poison the peace of families and violate the good order of society.

The statutes passed at the last session, for limiting the number of magistrates, extending the jurisdiction of the inferior courts and restraining abuses in the practice of the law, have been attended with salutary effects. And other important subjects will undoubtedly present themselves in the course of your deliberations, which may require your attention. Permit me to mention, at this time, the pro-

[a] See note 15.

priety of placing the jurisdiction of the courts of sessions in the counties on the same footing as that of the city of New York, and also, of altering the law on the subject of executors and administrators, by giving them time to arrange their trusts before the institution of suits; by abrogating preferences in the payment of debts; and by facilitating the proving and recording of wills, and the sales of real estates.

After assuring you of my cordial co-operation in all your measures for the public good, I shall only detain you from your important duties, by informing you of my proceedings in the execution of certain statutes, passed at the last session. I appointed a commissioner to examine the outlet of Buffalo creek, and to report on the site, plan and expense of a commodious harbor for that important place.[16] I have also made a similar arrangement in relation to Little Sodus Bay and Great Sodus Bay, on Lake Ontario. Commissioners have been associated with the attorney general to perform the duties assigned by the act relative to the claims on certain lands in the county of Putnam. And also, with the surveyor general to lay out the village of St. Regis, and to execute the other requirements of the act relating to the lands belonging to the people of this state in the St. Regis reservation.

An agent has been appointed under the act relative to the demands of this state against the United States, and he has been vigilantly and actively engaged in the performance of his trust, which is now in a fair train of completion. The duties confided to me by the act entitled "an act of honor to the memory of General Richard Montgomery," were executed under a full conviction that every great example

[16] The construction of a harbor at the mouth of Buffalo Creek was authorized by chap. 104, passed April 7, and an appropriation of $12,000 was made for this purpose. The canal commissioners were required to examine the proposed public work for the purpose, if practicable, of making it a part of the canal system, and if found available for this purpose to direct its improvement accordingly.

of heroic virtue ought to be cherished as an important acquisition to the honor and dignity of the human race.[17]

De WITT CLINTON.

Albany, January 5, 1819.

SPECIAL MESSAGES.

January 8. To the Senate: Transmitting the annual report of the Marine Hospital in the city of New York.

January 11. To the Senate: Transmitting the report of the commissary general relative to military stores received from the United States on account of those due to this state.

January 11. To the Assembly: Transmitting and recommending immediate attention to the following communication relative to the Stockbridge Indians:

"Letter from J. Sergeant, Jun. to the Honorable John Tayler, Esq. Lieutenant-Governor of this State.

Honorable Sir.— At the request of the chiefs and warriors of the Stockbridge Indians, I take the liberty to give you a detail of the circumstances relative to their intended settlement at White River, Indiana. They departed to the number of about seventy, in August last, and arrived within about 100 miles of their place of destination, when they were informed, that the lands on White River were just ceded to the government of the United States, in a treaty between the government and the Delawares; they immediately sent two of their young men back to New Stockbridge with the intelligence. I will now briefly state the claim of the Stockbridge Indians, their prospects and desires.

The Stockbridge Indians, about 150 years ago, obtained from the Miamies, (the ancient owners of that country), a cession of all the lands within a certain district, embracing

[17] Chap. 248, passed April 13, appropriated $1,744 to the Governor, and $57.71 to Solomon Van Rensselaer to pay the balance due them for expenses incurred in removing General Montgomery's remains from Quebec to New York.

all the lands adjacent to the waters of the White River. In the year 1808, a treaty was held at the city of Washington, between the government of the United States and the Miamies, the Delawares, and Maumies and the Stockbridge Indians; at which treaty, all the lands on the waters of the White River were confirmed to the Delawares, the Miamies and the Stockbridge Indians, jointly, and to their heirs forever.

As the land in question has been ceded by the Delawares to the government of the United States, the object and desire of the Stockbridge Indians is, to have a certain part or portion of the above mentioned lands located for themselves. Now, in order to the attainment of their object, it is thought necessary for some of their chiefs to go immediately to the seat of government, and as they are destitute of funds, they have requested me to inquire, if the money which will become due to them in June next, may be obtained at this time, after making suitable deductions for interest. They have no other means of obtaining money necessary to bear their expenses — they would be glad to start for Washington as soon as next week. If they can receive their money on their way, at Albany, it will answer their purposes. I think it would be a circumstance of regret, if they should lose their lands, and be obliged to stay here, for the want of a place to go to. If their request can be granted, please inform me by the next mail, and allow me to subscribe myself, your obliged and humble servant.[18]

J. SERGEANT, JUN."

Vernon, Dec. 21, 1818.

January 12. To the Assembly: Transmitting a communication from the comptroller relative to the compensation

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[18] The payment of the Stockbridge annuity in advance, as suggested by the Governor, was authorized by chap. 3, passed January 15.

of marshals appointed by any court martial or court of inquiry.[19]

January 12. To the Assembly: Transmitting the annual return of the militia.

January 13. To the Senate: Transmitting a treaty with the Stockbridge Indians for the purchase of part of their territory, including 5,640 acres in Madison and Oneida counties.[20]

January 14. Thanking the Senate for its address.

January 14. To the Assembly:

"Gentlemen.— The accompanying letter from the attorney of the Oneida Indians, will inform you of their wishes in relation to an advance in their annuity, and it is proper to mention, that there is no existing authority to make such anticipations, however desirable it may be under certain circumstances.

De WITT CLINTON."

Albany, 14th January, 1819.

January 18. Thanking the Assembly for its address.

January 20. To the Assembly: Transmitting the annual return of the inspector general of staves and heading.

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19 An Assembly committee presented a report, expressing an opinion that the provision of the statute relative to the compensation of marshals did not admit of any doubtful construction, but was clear and explicit, and that the judge advocate should have had no difficulty in applying it. The committee also thought that no construction could be given by the Legislature which would vary the contract made between the government and the officers who had performed the service, but to prevent a recurrence of the misunderstanding recommended an amendment to the militia law which was included in chap. 219, passed April 13, fixing the marshal's compensation at $2 a day, which was to include all expenses.

20 The Stockbridge treaty was confirmed by chap. 100, passed April 2. The same act directed the commissioners of the land office to convey 250 acres to John Sergeant upon receiving the Governor's certificate proving Sergeant's claim.

January 25. To the Assembly:

"GENTLEMEN.— I now transmit to you returns of the Commissary General, which furnish a complete view of the state of our ordnance and Military stores.

DE WITT CLINTON."

Albany, 25th January, 1819.

January 30. To the Assembly: Transmitting a report relative to the quarantine establishment on Staten Island.

February 1. To the Assembly: Transmitting a resolution adopted by the Vermont legislature proposing an amendment to the federal constitution providing for the election by single districts of representatives in Congress and presidential electors, except that the two additional electors should be chosen in such manner as the legislature might direct.

February 2. To the Senate: Transmitting a communication from the Comptroller informing the Governor that the managers of the literature fund lottery proposed to sell tickets at auction at a sale advertised for that purpose, expressing doubt whether such a sale was authorized by the statute, unless the comptroller was present, and suggesting that the Legislature prescribe a rule for such cases.[21]

February 3. To the Assembly: Transmitting the report and accompanying papers presented by the commissioners appointed under an act passed at the last session to investigate the claim of John Jacob Astor to certain forfeited lands in Putnam county.[22] See last session note 23, *ante*, p. 940.

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[21] Chap. 9, passed February 4, authorized the postponement of the literature fund lottery sale at public auction to such time as the managers and the comptroller might agree upon, not exceeding sixty days.

[22] The appropriation act, chap. 187, passed April 13, made provision for the payment of the accounts presented by the commissioners appointed to investigate the Astor claim.

February 8. To the Senate:

"Gentlemen.—I have the honor to transmit to you, a report of William Peacock, Esq. the commissioner appointed under the act, entitled 'an act relative to the harbor of Buffalo creek, in the county of Niagara,' and I feel persuaded, that a subject so interesting to the internal trade of the country, will occupy your deliberate attention. [See note 16.]

De WITT CLINTON."

Albany, 8th February, 1819.

The report recommended improvements to Buffalo harbor partly for the commercial advantages which might be derived by the town, which report declares "the key which opens to the people of the State of New York a most stupendous path of navigation and of commerce extending the distance of more than two thousand miles," and also because of the prospective connection with the Hudson River through the Erie canal, then in process of construction. [See note 16.]

February 10. To the Assembly: Transmitting the annual report of the superintendent of the Brothertown and New Stockbridge Indians.

February 19. To the Assembly: Transmitting the report of the inspector of flour and meal in the city and county of New York.

February 19. To the Assembly: Transmitting a communication from the attorney general relative to lands in the military tract, and recommending that an allowance be made to Gershom Powers for his expenses as agent for the State in making needed investigations.[23]

[23] An act for the relief of the occupants of military lands which had escheated to the people of this State, chap. 244, was passed April 13. Occupants of land acquired under statutes passed during the Revolutionary war, providing for allotments for military service, might, on proving certain facts, receive letters patent from the commissioners of the land office.

February 27. To the Assembly: Transmitting a report from the adjutant general in response to a resolution by the Assembly, requesting information concerning brevet appointments in the militia.[24]

March 4. To the Assembly: Transmitting a communication from some of the Stockbridge Indians relative to land which had been sold by the tribe to John Sergeant. [See note 20.]

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[24] The Assembly committee on militia, to which the Adjutant-General's communication was referred, submitted the following report on the 12th of April:

"The committee have taken into consideration the subject of brevet appointments by the commander-in-chief, and are of opinion, that he possesses no such powers, derived either from the constitution or laws of this state, or of the United States. It is a necessary and incidental power belonging to every military commander, temporarily to supply any deficiency of officers in his corps, when any particular service is required. Thus, when it becomes necessary for the commander-in-chief, to make a detachment from the militia, either for the service of this state or the United States, in directing the arrangement and organization of that force, he may direct the manner in which vacancies shall be filled. A general officer, or the commanding officer of a regiment, may supply any deficiency in his staff, until the vacancy shall be filled in the manner pointed out by the constitution of this state. The captain, or commanding officer of a company, may, in like manner, appoint a subaltern in case of a vacancy. These powers are not derived from custom alone, but have grown out of, and are supported by, the necessity of the case. The commander-in-chief, in case of a vacancy, and in the recess of the Council, may rightfully appoint the chief of any of the staff departments. He is authorized by law to appoint three aids, with the rank of Colonel, and one military secretary with the rank of major. All supernumerary appointments of that kind are, not only nullities, but irregularities, calculated to deceive officers who may have a legitimate command over them. When there is no major general in a division, or brigadier general in a brigade, the command devolves on the senior officer therein; and it may frequently be proper, and sometimes necessary, for the commander-in-chief to announce the fact in a general order. The appointment to that command by brevet, even if the senior officer is brevetted, can give him no additional power or rank; and in case a junior officer should be brevetted to that command, it might lead to insubordination and mutiny. The senior officer would not be bound to obey him.

The appointment of officers by brevet, without any troops to command, was taken into consideration by the committee. They believed, that every commanding officer of a company in this state, would readily perceive, that such commissions could give them neither rank nor privilege; and, that they would enrol them in their companies, unless otherwise exempted. The committee supposed, that legislative provision in that respect, was unnecessary."

The committee therefore recommended that no action be taken by the Legislature.

March 9. To the Assembly:

"Gentlemen.— The State Prison in New York, is erected on a plan incompatible with a fair and full experiment of our mild system of criminal jurisprudence; and it is represented to me, that its position may be changed to a place better calculated to promote economy, discipline and the ends of punishment, and without any expense to the state. I would therefore recommend the appointment of commissioners, to consider this subject; and also, with power to investigate the management of this institution from its first establishment, and to suggest such improvements as they may conceive proper; and, that they report the results of their inquiries and deliberations to the Legislature at the next session, to the end, that such measures may then be adopted, as, with a full knowledge of all the circumstances of the case, may be deemed most conducive to the public welfare and most honorable to the state.[25]

De WITT CLINTON."

Albany, March 9, 1819.

March 10. To the Assembly: Transmitting the resignation of Smith Thompson as a Regent of the University.[26]

March 15. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

March 16. To the Senate:

"Gentlemen.— In answer to your resolution of the 13th instant, I have the honor to state, that there is no informa-

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25 The Legislature adopted a concurrent resolution appointing commissioners "to examine into the propriety of disposing of the present state prison at New York, and erecting a new prison at some other place on the island of New York, with the cost thereof, with authority likewise to investigate the management of the said prison, from its first establishment, and to suggest such improvements as they may think proper; and that they report thereon at the next meeting of the Legislature, who will hereafter make an appropriation for their services."

26 Stephen Van Rensselaer was appointed Regent in place of Smith Thompson, resigned.

tion in my possession relative to the terms upon which the Holland land company have proposed to convey certain lands for the benefit of the canal fund, which has not heretofore been communicated to the Legislature by the canal commissioners.[27]

DE WITT CLINTON."

Albany, March 15, 1819.

March 18. To the Assembly:

"GENTLEMEN.—I have the honor to lay before you a communication from the directors of the Athenaeum of Philadelphia, signed by the chief justice of Pennsylvania, and three other respectable citizens of that state.

At the last session I submitted to you a similar request from the American Antiquarian Society, which was not definitively acted on. I now respectfully recommend, both these applications to your favorable attention.[28]

I also transmit to you a letter from Thomas Dobson & Son, of Philadelphia, soliciting the purchase of Seybert's Statistics by the state, a work of distinguished merit, which has been liberally patronized by the national government.

I avail myself of this occasion, to request your renewed attention to my message of last session, respecting a proposal of William A. Mercein, to sell to this state, for the use of the militia, a system of military tactics and discipline, prepared by a board of officers and adopted by the national government; he now offers to supply any number that may be required, for one dollar and fifty cents per book.[29]

DE WITT CLINTON."

Albany, 18th March, 1819.

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[27] Chap. 226, passed April 13, declared "the terms and conditions of a grant of lands from the Holland Land Company for the use of the people of this State."

[28] At the next session, 1820, an act was passed, chap. 6, on the 21st of January, providing for the distribution of statutes to the Athenaeum of Philadelphia and of the town of Boston.

[29] By chap. 248, passed April 13, 1819, relating to the commissary's depart-

March 19. To the Assembly: Transmitting a communication from Thomas Eddy relative to prison discipline.

March 20. To the Assembly: Transmitting a communication from the Onondaga Indians requesting that Thaddeus M. Wood be appointed agent for the tribe in place of Ephraim Webster, whose conduct of the office had not been satisfactory to the Indians.

March 22. To the Senate:

"Gentlemen.—A number of families have settled on Grand Island, in the Niagara River, since the extinguishment of the Indian title; and because the jurisdiction over the islands in that river has not been settled under the treaty of Ghent, they disclaim the authority of the state; and, besides inflicting great injury on the public property, they may, in course of time, become a serious annoyance to that part of the country. The accompanying communications from Col. Chapin and the Attorney General, will evince the necessity of legislative interposition, which I consider it my duty to recommend.[30]

De WITT CLINTON."

Albany, 20th March, 1819.

Martin Van Buren, Attorney General, reported that he had examined the communication from Col. Chapin, and that in his opinion there were three remedies available, namely, ejectment, writ of intrusion or information by

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ment, the adjutant-general was authorized to purchase at a price not exceeding $.60 each, one copy of Scott's Exercise, published by Paraclete Potter, for each captain of militia. By the same act the adjutant-general was also authorized to purchase, at a price not exceeding $1.22 a volume, copies of Gardner's Compend sufficient to furnish one to each general and field officer, and to each of the adjutant-general's staff of this state.

[30] Chap. 227, passed April 13, authorized the Governor to direct the sheriff of Niagara County to remove from Grand Island all persons who had unlawfully intruded thereon, and the sheriff might, if necessary, destroy all buildings erected by the intruders.

the attorney general for such intrusion under the statute; and actions of trespass in the name of the people. All of which were deemed slow and impracticable. He thought the legislature had power to provide for the removal of intruders without judicial interference.

March 23. To the Assembly:

"GENTLEMEN.—In a late message, I mentioned a proposal of Mr. Mercein, to supply the militia of this state with an approved system of military instruction. I consider it important that this should be done at the public expense; and under this impression, I recommend to your favorable notice a book recently published by Col. Gardner. The high merit of this work is fully established by the accompanying communication from General Brown. [See note 29.]

DE WITT CLINTON."

23d March, 1819.

March 26. To the Senate: Transmitting a communication from Samuel Parsons and others, protesting against proposed legislation authorizing the infliction of corporeal punishment in state prisons, and employing prisoners on public works. [See note 15.]

March 26. To the Assembly: Transmitting a communication from the judge advocate of the 30th Brigade, and a report of the judge advocate general to whom it was referred. The report recommends legislation by which officers shall be protected from the mortification and expense to which, as presidents of courts martial, they may be subjected.

March 31. To the Assembly:

"GENTLEMEN.—At a late court of oyer and terminer, held in Orange county, at which the Hon. Mr. Justice Van Ness presided, four persons were convicted as principals or accessories before the fact, in a case of murder, and sentenced to be executed on the 16th of April next.

I send you a communication on that subject, from the presiding judge, and I recommend it to your immediate consideration.[31]

De WITT CLINTON."

Albany, March 31, 1819.

April 1. To the Senate:

"Gentlemen.— The state having a considerable interest in the Merchants' Bank, I consider it my duty to lay before you a communication from the directors of that institution. It may be worthy of consideration, whether defalcations and fraudulent practices of the kind mentioned in this com-

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[31] The following is the communication from Judge Van Ness:

Albany, 31*st March*, 1819.

Sir.— The following persons were tried and convicted at the special oyer and terminer, lately held in the county of Orange, for the murder of Richard Jennings, viz: Jack Hodges, (a black man) and David Dunning as principals, and James Teed and David Conklin, as accessaries, before the fact, and they are sentenced to be executed on Friday the sixteenth of April next.

As the accessaries could not by law be tried, until after one of the principals had been convicted, Hodges was first brought to trial, and being found guilty, the public prosecutor next proceeded against the accessaries, who were separately indicted, and made use of Hodges as a witness against them, as he also did against Dunning. The verdicts in all the cases were perfectly satisfactory, as well to myself as to all the judges of the common pleas, who were associated with me in the trials. The manner in which Hodges gave his testimony; the promptness with which he answered all the questions that were put to him; his great consistency and apparent candor and frankness throughout the whole investigation, inspired both the court and jury with entire confidence in his credit and integrity as a witness.

Since the trials, I have carefully and maturely examined and considered how far, under all the circumstances, Hodges, being an accomplice, and having been used as a witness in behalf of the government, is entitled to mercy; and I find it to be a settled rule in the criminal law, that an accomplice who is received and used as a witness; who fully and truly discloses the joint guilt of himself and his companions; who answers honestly to all questions that are put to him, and appears to have acted a fair and ingenuous part, by giving a faithful relation of all the facts within his knowledge, is equitably entitled to the favor and mercy of the government. On this point, I considered it my duty, to consult the chief justice and the other judges of the supreme court, and I am authorized by them to state, that they concur in the opinion I have expressed, and I accordingly recommend Hodges as a fit object of pardon. Whether the pardon, however, ought to be absolute or conditional, is worthy of serious consideration. Sound policy, and a due regard to the public safety, would seem to require, that so dangerous a man should not, at least for some time to come, be set at liberty.

I am very respectfully,
Your obedient servant,
W. W. VAN NESS.

Hodges and Conklin were pardoned by chap. 151, passed April 10.

munication, ought not to be the subject of criminal animadversion. With the utmost vigilance and integrity on the part of the managers of monied institutions, it is impossible to adopt preventive measures against such frauds—and as the inadequacy of civil remedies is obvious, legislative interposition is recommended by sound policy.[32]

DE WITT CLINTON."

Albany, 31st March, 1819.

The communication from the directors stated that through a conspiracy entered into between the first teller of the bank and two brokers of New York, the latter had fraudulently procured from the bank $100,000, which had not been repaid; that when the directors discovered the transaction suits were commenced against the teller and the brokers for the recovery of the money, and none of them being able to procure bail they were all placed in the jail in New York. The directors further state that the teller had made an affidavit which, however, was not deemed to contain a full disclosure of the transaction, nor the names of all persons participating in the fraud. In view, therefore, of the fact that the state was the proprietor of a large portion of the capital of the bank, the advice of the officers of the state was sought as to the course the directors ought to pursue in the matter.

April 3. To the Assembly: Transmitting a communication from P. Potter, proprietor of a work on military tactics, offering to furnish it to the state at $.60 a copy. [See note 29.]

April 5. To the Senate: Transmitting an application and accompanying papers for the pardon of Thomas Burke.[33]

April 5. To the Senate: Transmitting a communica-

[32] Chap. 246, passed April 13, contained provisions intended to protect banks against embezzlements by their agents, clerks or servants.

[33] Burke was pardoned by chap. 243, passed April 13.

tion from the surveyor General relative to the proposed purchase of 640 acres of land reserved to certain Indian families in a treaty with the Oneida Indians made in 1809, by which the State acquired a part of the Fish Creek reservation.[34]

April 5. To the Assembly: Transmitting a report from Ferris Pell, agent of the State to negotiate a settlement of the claims of the state against the United States growing out of the late war, and also for the sale to the federal government of the fortifications on Staten Island at the Narrows. The information was furnished in response to an assembly resolution, and the report showed that some progress had been made on both branches of the negotiation, but that they were both still under consideration.

April 9. To the Senate: Transmitting a communication from the Commissary General showing a balance still due the city of New York on the assessment of the arsenal lot for street improvements; and also presenting an estimate of the amount needed by the department for the current year.[35]

Transmitting also a statement from the comptroller relative to the expenses incurred in the execution of the act entitled "an act of honor to the memory of General Richard Montgomery." [See note 17.] The removal of General Montgomery's remains from Quebec to New York was authorized by chapter 10, passed February 27, 1818, which contained the following preamble and enactment:

"*Whereas,* General Richard Montgomery, a citizen of this state, distinguished himself, by his valor and patriot-

[34] By chap. 235, passed April 13, provision was made for the appraisal of the value of the improvements on this tract of 640 acres, and the Governor was directed to cause the amount of such appraisal to be paid to the Indian families interested therein on their removal from the land; and after such removal the 640 acres were to become a part of the state's unappropriated lands, and be subject to the jurisdiction of the commissioners of the land

[35] Chap. 248, passed April 13, made an appropriation to pay the balance due on the arsenal assessments, and also appropriated $2,800 for the use of the commissary's department for the current year.

ism, among the earliest of the heroes of the revolution, and was slain while in the act of gallantly leading the attack on Quebec: *And Whereas,* the remains of the said General Richard Montgomery, are interred near the battle ground, undistinguished by any respectful mark; *and whereas,* a monument has been erected to his memory, with others, in Saint Paul's church, in the city of New York, by the Congress of the United States: Therefore,

Be it enacted by the People of the State of New York, represented in Senate and Assembly, That the person administering the government of this state, for the time being, be and he is hereby authorized, to cause such measures to be taken, as he shall deem expedient, to obtain the consent of the government of Canada, to the removal of the remains of General Richard Montgomery, from Quebec to the city of New York, there to be deposited in Saint Paul's church, near the monument there erected to his memory; and that he shall cause such removal to be made, when such consent is obtained, at the expense of the state."

Chapter 288, passed April 21, 1818, appropriated $1000 for the purpose of carrying the foregoing act into effect.

The following accounts and certificates contain a statement of the expenditures under chapter 10, in removing General Montgomery's remains:

THE STATE OF NEW YORK,

To DE WITT CLINTON, Governor, Dr.

1818, June 8.	To cash paid Lewis Livingston, to bear his expenses in going to Quebec, to receive the remains of General Richard Montgomery, and returning with the remains.....	$300.00
29.	To do. paid Gen. Solomon Van Rensselaer, for defraying the expense of escorting the remains from Whitehall to Albany, and from Albany to New York, &c.	700.00

Novem. 7.	To do. paid John Meads, for coffin, pall, &c.....	$413.00
	To do. paid steam boat Richmond, for carrying remains, military escort, &c.	180.00
	To do. paid L. Pearse, for chair hire, horse hire, &c.....	68.00
14.	To do. paid Richard Varick, Esq. for expense of scarfs, repairs of monument at St. Paul's church, New York, &c. &c....	1,034.64
	To do. paid state bank, discount until 15th April next, on a sum borrowed to pay the four last charges.....	48.36
	Dollars	2,744.00

Cr.

1818. June 8.	By cash at the treasury.....	300.00
29.	By do do.....	700.00
	Balance due the Governor...	1,744.00
	Dollars,	2,744.00

State of New York — Comptroller's Office.

I have examined the preceding account of his Excellency De Witt Clinton, Governor of this state, with the vouchers accompanying the same and do hereby certify that he has paid for sundry expenses in the removal of the remains of General Richard Montgomery, from Quebec; for military escorts; for coffin in which remains were deposited — for repairs of monument at St. Paul's church, New York; for scarfs furnished revolutionary officers and pall bearers, and other expenses in doing honor to the memory of the said General, the sum of two thousand seven hundred and forty-four dollars, including forty-eight dollars and thirty-six cents, for discount paid the New York State Bank, on a loan to enable the discharge of the accounts of John Meads, of the steamboat Richmond, of Richard Varick and L. Pearse; and I do also certify, that the sum appropriated

by law, and paid out of the treasury for defraying the said expenses, was one thousand dollars, and that there is a balance due to the Governor of seventeen hundred and forty-four dollars, for the payment of which there is no provision by law.

ARCH'D McINTYRE, Comptroller.

Albany, January 24, 1819.

THE STATE OF NEW YORK,

To SOLOMON VAN RENSSELAER, Dr.

To sundry expenses of military escorts, to do honor to the memory of General Richard Montgomery, per vouchers.....	$751.71

Cr.

By amount paid to him by his Excellency the Governor	700.00
Balance due Solomon Van Rensselaer.	51.71
dollars	751.71

April 9. To the Assembly:

Objections by the Council of Revision to a bill "concerning the courts of oyer and terminer and general sessions of the peace."

"Because, by the first section of the bill, any court of general sessions of the peace may order a *nolle prosequi* to be entered upon any indictment found in such courts. By the existing law of the land, indictments for all crimes and misdemeanors whatsoever, may be found in the courts of general sessions of the peace, though they have no jurisdiction to hear and determine indictments for offences punishable with death, or with imprisonment in the state prison for life; and the court which cannot try, and which, therefore, cannot be supposed to take any judicial consid-

eration of the nature and circumstances of such cases, ought not to be enabled, in its discretion, to defeat prosecutions for the same."

The bill was not passed over the veto.

April 13. The Legislature adjourned without day.

1820. JANUARY. LEGISLATURE, FORTY-THIRD SESSION.

DE WITT CLINTON, Governor.

The Legislature met the 4th of January, and on the same day, the Governor delivered the following

OPENING SPEECH.

Gentlemen of the Senate and of the Assembly.—Since the last session of the legislature, the distresses of the community have continued to increase; and in consequence of the general uneasiness excited by this unpropitious state of things, meetings have been held in various places to solicit your interposition. Immediately on the termination of the late war, a fatal blow was given to the manufacturing interests by the importation of vast quantities of foreign fabrics, neither required by our wants nor our comforts. In all sections of the country, and in all descriptions of society, the progress of extravagance and luxury has been alarming, In individuals, expenditure has exceeded income; and in our collective capacity, as a nation, the aggregate value of our exported productions has been greatly inferior to the cost of foreign commodities. The demands of foreign markets for the products of agriculture have been diminished by a state of general peace, and the pernicious multiplication of banking institutions, and the inordinate diffusion of a paper currency, have produced

the most serious calamities. In cases of this description, government may alleviate, but can never remove the evils. The conservative power over the general good is at all times vested in the great body of the people, and in the present crisis, it consists most emphatically in the retrenchment of our expenses, and in the augmentation of our industry. The sources of the prosperity of nations, as well as of the happiness of individuals, must be formed and cherished at home. The season of suffering cannot, however, be of long duration. A vast capital, now unproductive and unemployed, will soon be applied to animate the efforts of useful industry; and the renovating power and enterprising spirit of our country, must predominate over the obstacles which have conspired to check its prosperity. Whatever measures you may adopt, will, I am confident, be marked by a sacred regard for private right and public utility. And I would suggest to you whether a portion of our funds might not be usefully employed in loans for the purpose of alleviating the pressure on the community.[1]

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[1] The Assembly committee which had under consideration this part of the Governor's speech made an extended report on the 6th of March, recommending that loans of state funds be authorized to relieve existing financial embarrassments, no person being permitted to borrow more than a specified amount, and to give adequate security on real estate. The committee referred to several statutes authorizing loans of this character, beginning with 1786, and said that nearly all of the money so loaned had been repaid to the state with interest. The committee referred to the "doctrine that prevails amongst some very eminent statesmen that it is bad in theory, and dangerous in practise for citizens to become deeply indebted to their government;" but the committee thought this doctrine could not apply to existing circumstances, for the reason that the loans would be so widely distributed that no individual could become a large borrower. The committee said further that loans would be especially beneficial to agricultural interests, and would prevent the loss of many farms by sales on execution, which almost necessarily resulted in a great sacrifice of property; also that "the want of a circulating medium, and the great amount of property required to discharge debts at this time, is what particularly causes the pressure on the community."

The committee recommended a bill "authorizing a loan of money to the citizens of this state, and directing a more safe and economical mode of

The favorable condition of the treasury and the high credit of the state are equally a subject of congratulation. With the continuance of our present system of finance, we shall, I am persuaded, be enabled to defray the expenses of government, to evince the usual munificence of the state. and to prosecute our internal improvements without any resort to new burdens, and with a reduced rate of interest.

The law which was passed at the last session for the encouragement of agriculture, has fully realized the patriotic views of the legislature. The institution of a board to superintend the interests of that important pursuit, with authority to receive and communicate useful information, and to dispense the means of valuable improvement, will always be considered an important era in our history; and the encouragement of local institutions, by the appropriation of a premium fund for the best and most abundant products, has already excited an unrivalled spirit of emulation and exertion. Twenty-seven counties have drawn from the treasury the monies allotted for that purpose, and forty-one have established agricultural associations. The universal interest which this subject has created, and the extraordinary benefits which it has dispensed, may be seen in the exhibitions and competitions for premiums; and the combinations of practical and scientific men; in the luminous discourses of the presiding officers; in the vast collection of citizens, at the places assigned for meeting; in the improved quality and increased quantity of our commodities; and particularly in such unprecedented and abundant products, as to induce a belief that, in some instances, agriculture has nearly attained its utmost perfection by raising the greatest possible quantity of produce at the least comparative expense. The excellence of this system may, however, be greatly improved by

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superintending the several county loans in this state." No general law was passed, but several loans to individuals, and also one to a corporation, were authorized by special acts.

extending the duration, augmenting the fund, and enlarging the power of the superintending board. A statistical survey, describing the actual condition, and developing the possible improvement of the state, may be easily effected through this institution; and I know of no measure better calculated to promote our cardinal interests, to encourage our agriculture, manufactures and trade; to illustrate our resources, to advance natural science and political philosophy, and to elevate the character of our country.[2]

Experience has evinced the precarious and fluctuating nature of foreign markets for the disposal of our products. Even in the most prosperous times of our commerce, and in seasons of the greatest foreign demand, there was at least twice as much grain consumed in this state alone as was exported from all the United States. The principal surplus of agricultural productions, not required for the use of the agricultural interest, must be either consumed at home or lost to the cultivator. Foreign commerce may co-operate in creating flourishing Atlantic cities; but internal trade must erect our towns on the lakes and rivers, and our inland villages; and internal trade must derive its principal aliment from the products of our agriculture and manufactures. As the protection of the foreign and of the carrying trade, two of the great branches of commerce, is entirely entrusted to the national government, the state authorities cannot extend their power beyond the encouragement of the home trade, by cherishing the agricultural and manufacturing interests, and promoting the channels of communication, and the co-operation of the general administration, for the attainment of these invaluable ends, is, to a certain extent, all important.

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2 By chap. 97, passed March 24, the agricultural law of 1819 was amended by making further provision for the encouragement of agriculture and family domestic manufactures, specifically by including the counties of Niagara and Cattaraugus among those entitled to an apportionment of agricultural funds, conditioned on the organization of an agricultural society therein, and the amended act was continued for four years.

The reciprocal dependence of the great departments of productive industry, is a wise dispensation of Providence to extend the sphere of human usefulness, to animate and multiply the motives for activity, and to cement the fabric of human society. The successful progress of the important channels of communication now opening in this state will have a benign influence, not only in producing facility and cheapness of transportation for the proceeds of labor, but also in creating markets for their consumption. Already do we perceive the establishment of villages on the borders of the great canal; and the raw materials of the husbandman, obtained with comparative ease and cheapness by the manufacturer, will be converted into articles of accommodation and comfort. This, in time, will establish on a solid foundation, an important interest, which will use the fruits of agriculture, as well in the fabrication of commodities, as in the sustenance of human life. And thus, by the reciprocal action of benign influences, the great departments of productive labor, will harmoniously co-operate in creating individual and national opulence. The carriers, buyers, and venders of commodities, will constitute an important class in the interior; and the great accession to the other professions and pursuits, and the general augmentation of our population in consequence of our growing prosperity, will enable us to carry on a vast system of internal trade, which will in a great measure supersede the necessity of foreign markets.

The middle section of the Western Canal, including a lateral canal to Salina, and comprising a distance of nearly 96 miles, has been completed. On the 23d day of October last, the commissioners navigated it from Utica to Rome, and found their most sanguine expectations realized in the celerity, economy and excellence of its execution; and on the 24th day of November the Champlain Canal was also in a navigable state. In less than two years and five months 120 miles of artificial navigation have been finished; and

thus the physical as well as financial practicability of uniting the waters of the western and northern lakes with the Atlantic ocean has been established beyond the reach of doubt or cavil. The efforts of direct hostility to the system of internal improvements, will in future be feeble. Honest and well disposed men who have hitherto entertained doubts, have yielded them to the unparalleled success of this measure. But as there is great reason to apprehend the exertions of insidious enmity, I consider it my solemn duty to warn you against them. As the canal proceeds to the west, the country east will of course be accommodated, and in proportion to its progress to completion, in that ratio will it be considered more easy to combine a greater mass of population against its further extension. Attempts have already been made to arrest its progress west of the Seneca River, and it is highly probable that they will be renewed when the work is finished to the Genesee. As the benefits of artificial or improved navigation are rendered more obvious by experience, efforts will be made to obtain appropriations for great local accommodations, and while good men will endeavor to acquire them with honest views and for patriotic purposes, they will receive the countenance of persons of a different description, who in furtherance of selfish designs will strive to destroy the great fabric of internal improvements, by withdrawing or dispersing the fund appropriated for its support.

Under a full persuasion that the honor and prosperity of the state imperiously demand the completion of the whole of this great work, and that if we are just to ourselves and to posterity, it will be effected in five years, I am happy to assure you that the decided and prudent measures of the canal commissioners in October last, are in full accordance with these impressions. At that meeting they directed that portion of the western section, which extends from the Seneca River to Rochester on the Genesee River, and that portion of the eastern section which commences at the eastern termination of the middle section, and reaches to

the east side of the Little Falls, to be marked out as parts of the Great Western Canal, and to be contracted for as such; and considerable progress has been already made in these important operations.

The whole length of the western section is about one hundred and sixty-three miles, and of the eastern about ninety-seven; and notwithstanding the disparity of the distance, it is estimated that the expense of each will be about the same, making in the aggregate, four millions of dollars. The object and tendency of that measure of the canal commissioners must be obvious; and policy, as well as justice, concurred in recommending its adoption. By operating in both directions a solemn pledge is given of our determination to finish the whole canal; sectional jealousies are allayed; the advantages arising from pecuniary expenditures are impartially dispensed; and every advance of the work, in either way, will facilitate communication. The completion of the middle section has already opened markets for a fertile and extensive region. The expense of conveying a barrel of flour by land to Albany, from the country about the Cayuga Lake, was more than twice as much as the exportation of one from New York to Liverpool; and the difference between the former and the present cost of conveyance will not only remunerate the manufacturer, but afford an increased compensation to the agriculturist, independently of the rise of the commodity in value, from its being furnished with a good market. It is believed that our Atlantic country will soon be supplied with salt from the west, cheaper than from abroad, and the revenue from the salt works, appropriated to the construction of the canal, already exceeds the most favorable estimates, and shows conclusively the importance of this communication to the accommodation of a vast country. In the progress of the canal, gypsum of the best quality has

been discovered; and it is ascertained that this region contains a sufficient quantity of this invaluable mineral for the supply of the whole United States. Heretofore, the principal ingredients of hydraulic mortar were procured at a great expense from abroad for the construction of locks; but a species of lime stone has been found, dispersed over the whole country, admirably adapted for water cement, and entirely superseding the necessity of a foreign supply. Stone, for the construction of locks, culverts, bridges and aqueducts, is also found in abundance; and it is confidently believed, as well from the geological character of this region as from various other indications, that coal will be discovered amply sufficient for domestic uses, and manufacturing establishments. The animation which this work, in its present unfinished state, has given to our internal trade, cannot be duly appreciated without the advantages of personal observation, nor can all its blessings be realized or displayed until years of experience have passed away.[3]

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[3] Chap. 117, passed March 30, amending the act of 1817, suspended the steamboat tax and in lieu thereof imposed an annual tax of $5,000. The commissioners of the land office were authorized to procure the surrender of certain salt lands, and dispose of the same for village lots and salt manufacturing, the proceeds to be paid into the canal fund, except that from the first proceeds the sum of $25,000 was appropriated for the improvement of the Oswego river.

Another act, chap. 187, passed April 12, contained general provisions for continuing canal construction, including the extinguishment of the title of the Western Inland Lock Navigation Company.

Chap. 202, passed April 13, provided for highway bridges over canals, to be erected at the expense of the town in which the bridge was located, and to be constructed on a model, and at a location determined by the canal authorities. The same act contained provisions relative to the acquisition of land and rules regulating the use of the canals.

By the last section of chap. 232, passed April 14, relating to the disposal of lands owned by the city of Albany, it was provided that when Grand Island should be sold by the Legislature, the proceeds should be applied to the construction of the Erie and Champlain canals.

It is a subject of high felicitation to observe the energies of our sister states directed in a similar way to the promotion of the general prosperity. The Carolinas and Virginia have adopted wise and vigorous measures for the advancement of inland communication; and some of the western states have been equally decided and public spirited. An union of the waters of the Illinois River and lake Michigan, and a connection between Lake Erie and the Ohio in the direction of the Sandusky and Scioto Rivers, are seriously contemplated. While measures so honorable to our sister states must always command our best wishes, and secure our highest approbation, let us be deeply impressed with the importance of attending to improvements of a similar character. Communications between the waters of Lake Ontario and the western canal, between the river St. Lawrence and Lake Champlain, and between the Susquehanna river and the Seneca lake, will accommodate important and respectable portions of our population, deserving, as well from their enterprising industry as public spirited character, every attention from the government. The improvements of the Oswego river, the establishment of a harbor at Buffalo, and the draining of the Cayuga marshes have received that consideration which was due to subjects so worthy of the favorable attention of the canal commissioners, and the results of their measures will be communicated to you as soon as possible.

The board of commissioners, constituted by an act of last session, to report a plan for improving the navigation of the Hudson River, have attended to the important duties assigned to them. The low state of the waters was favorable to their operations, and evinces, beyond doubt, the necessity of your interposition, (which indeed cannot be too earnestly inculcated) as you will percieve from the proceedings of this board, which will be presented to you.[4]

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[4] An Assembly committee recommended more stringent legislation for the protection of fishing in the Hudson River, especially to prevent fishing by means of poles and set nets, for the reason, as pointed out in the report, that

By the act respecting navigable communications between the great western and northern lakes and the Atlantic ocean, passed the 15th of April, 1817, a tax of $250,000 is directed to be imposed on the lands lying within twenty-five miles on each side of the canals, from the Mohawk to the Seneca River, and from lake Champlain to the Hudson. And by the act concerning the great western and northern canals, passed on the 7th of April last, this assessment is suspended until the further order of the legislature. In operations of this nature, it must necessarily follow, that particular portions of territory will receive extraordinary benefits. But with the augmentation of their wealth, their ability to contribute to the public burthens will be proportionally enhanced, and consequently the taxes in other places will be correspondingly diminished. And it is submitted to you whether it comports with the magnanimity of government to resort to partial or local impositions, in order to defray the expenses of a magnificent work, identified with the general prosperity.

The improvement of natural and the prosecution of artificial navigation ought not, however, to divert our attention from the establishment of roads and bridges, so much demanded by the wants of new settlements, the convenience of all descriptions of people, and the primary interests of society. Every judicious improvement of this nature increases the value of land, enhances the price of commodities, and augments the public wealth. In the varying state of things in new countries, which must necessarily arise from the flow of population, the extension of settlement, and the fluctuation of capital, the application of different measures, at different times, may be requisite. A good

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the poles were so placed in the river as to cause serious obstruction to navigation when the poles were broken or cut off below the surface of the water. It was said that many boats and vessels had been injured by these unseen obstructions. No law was passed on this subject.

government will always consider with peculiar benevolence the hardships and sufferings of the first settlers of a country, and its disposition to dispense relief will only be limited by the great landmarks of justice and public policy.[5]

In order, however, to accomplish important improvements, to advance the great interests of productive industry; to establish the means of conveyance by land as well as by water; to disseminate literature and science; to patronize schools, academies, colleges and learned institutions; to promote the views of benevolence in the administration of healing to the sick, of comfort to the poor, and of instruction to the ignorant, it is necessary that a system of economy and retrenchment should be adopted and applied to all the measures of government and all the channels of expenditure. Good examples ought to emanate from those whom the people have honored with their confidence and invested with their authority. Considering the reduced prices of all the necessaries and comforts of life, and the pecuniary distresses of the times, I think that the period has now emphatically arrived when no objection ought to be made against a reduction of the compensation of the officers of government and of the members of the legislature.[6] The application of economy ought to be general and impartial; and it is respectfully submitted to you, whether it be not advisable to shorten your sessions, as the expense of the legislative department exceeds that of the executive and judicial combined. And as almost all important statutes are passed at the close of your meetings, the short in-

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[5] Several statutes were passed at this session providing for the construction and improvement of roads in different parts of the state, and also for the erection of bridges.

[6] The salaries of the principal state officers were established by chap. 2 (R. L.), passed February 17, 1813. An act passed at this session, 1820, chap. 124, made a very substantial reduction in the salaries of the principal state officers except that of Governor, whose salary was continued at $5,000.

terval between that period and the ensuing election, renders it impossible for your constituents to obtain accurate information of the character of the laws and the conduct of their representatives, before they are called upon to pronounce an opinion by their suffrages. Under these impressions it is suggested whether it would not be expedient to contract the duration of your session at least one half, and in furtherance of this important object, whether it would not be advisable to omit the answer to the speech of the governor. He is required by the constitution to "inform the legislature at every session" of the condition of the state so far as may respect his department, and to recommend such matters to their consideration as shall appear to him to concern its good government, welfare and prosperity;[6] and custom has prescribed a personal instead of a written communication, perhaps as being most respectful to the representatives of the people. But answers are not demanded by the constitution, nor by expediency, and besides prolonging the session, and frequently interrupting its harmony, they exhibit formality and pageantry not altogether well adapted to the simplicity of our republican institutions.[7]

With a view to illustrate the influence of our improvements in the administration of civil and criminal justice, I have caused certain inquiries to be addressed to the clerks of counties and the district attorneys; and their answers which will be laid before you, contain some suggestions of an interesting character on the subjects of our civil and criminal jurisprudence, and demonstrate the wisdom of the measures that have been adopted. It is certain that prosecutions even in justices' courts with enlarged jurisdictions

[6] Const. 1777, § 19.

[7] Acting on the Governor's suggestion, that the custom of presenting an answer to the Governor's speech be discontinued, both houses adopted resolutions declaring it inexpedient to present an answer to the Governor's speech.

have greatly diminished, and that the extortions and oppressions of a few who derived their support from the tears of misfortune and the calamities of indigence, have been almost entirely suppressed. And I think it, on this occasion, due to justice to state, that the provisions in these cases have received the decided approbation of the most respectable members of the legal profession.[8]

In soliciting your attention to the recommendations heretofore submitted to you with respect to the amelioration of our penitentiary system, as well in its organization as its administration, I cannot but express my gratification at the arrangements for solitary cells, and the separate dormitories in the state prison at Auburn. Great improvements must be elicited by the lights of experience; and we have the satisfaction of knowing that our mild system, with all its imperfections, is better adapted to promote the ends of criminal justice than the sanguinary code which formerly disgraced our country. In no country in the world are there fewer robberies, arsons and murders, than in this; and our observation has shown, that while it is impossible to extirpate crimes, it is possible to diminish their number and to mitigate their ferocity. In addition to my former suggestions, permit me to recommend, as highly important, a moral classification of criminals with distinctive appellations and accommodations, according to their grades of guilt. And if the pardoning power be confined to the best of the proposed divisions, a powerful appeal will be made to the hopes and fears, the enjoyments and privations of the prisoners, and a continual incentive to reformation will be in full operation.[9]

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[8] Chap. 159, passed April 7, was intended to prevent abuses by justices of the peace.

[9] Chap. 185, passed April 12, authorized the state prison inspectors to advertise for the letting of the state prison at New York, and the convicts confined therein and all such as should thereafter be sent to that prison.

As our present criminal code does not sufficiently provide against the consequences which may result from carrying secret arms and weapons, whereby human life may be endangered, or destroyed in sudden affrays, or in premeditated injuries, I would suggest this subject to your consideration with a full persuasion that it is a delicate one, and that unless it is judiciously treated an essential right of every free citizen may be impaired or invaded.

The Bank for Savings in the city of New York, instituted at the last session, to cherish meritorious industry, to encourage frugality and retrenchment, and to promote the welfare of families, the cause of morality, and the good order of society, has already manifested its claims to your confidence by an accumulation of more than one hundred and fifty thousand dollars in small deposits, and by shedding a benign influence on society. The application of this institution to authorize loans on real estate, as well as any other provisions subservient to its salutary objects will undoubtedly receive your sanction.[10]

Having had an opportunity to judge in a number of cases from personal observation of the condition of the militia, it has afforded me great satisfaction to witness their rapid improvement. There are several provisions which might be usefully adopted, and there are some defects with respect to the imposition and collection of fines and the dissolution of artillery companies, which require

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The contractor was to provide for the care and maintenance of the prisoners, but the prison was to continue under the general police supervision of the inspectors. The same act required the inspectors to consider the question of removing the prison to some other place in the city of New York, or to a place in the county of Westchester, and report thereon to the legislature at the next session.

[10] Chap. 109, passed March 24, regulated investments by the Bank for Savings in the City of New York, incorporated in 1819, and authorized deposits made by minors personally to be paid directly to them without the intervention of a guardian.

your notice. But as the consideration of all subjects relating to our physical force will necessarily be submitted to committees, a more detailed view can be presented to them by the appropriate departments. At some turnpike gates, toll is demanded from the militia when repairing to their places of rendezvous. As this is a departure from a general rule, and an unnecessary increase of their burdens, I submit it to your consideration whether the evil ought not to be removed.

The pestilence which threatened the health of the metropolis, and which had commenced the work of destruction, was arrested under the blessing of Almighty God, by the prudent and energetic measures of the board of health. A difference of opinion exists, and much controversy has taken place with respect to the origin and nature of this disease. Without any reference to the merits of discordant theories, it is sufficient to observe that all unite in recommending the utmost attention to the purification of our cities. For whether the disease emanate from abroad or originate at home, it is universally admitted that it is aggravated and extended by the want of cleanliness. The establishment of public baths and common sewers will have a most salutary influence. A populous city like New York can never furnish, within its own limits, the sources of pure and wholesome water. Aqueducts conveying water from a distance have been used in all cities where the public health and the general comfort have been duly consulted. At different times the river Bronx and the Sawmill Creek in the county of Westchester have been explored and examined in reference to the accommodation of the city of New York, and there is little doubt but that both if not either of those streams, will be amply sufficient. Whatever measures you may devise or whatever assistance you can render to promote the health and comfort of that im-

portant portion of our population, will, I am confident, be cheerfully performed.[11]

I present to you my cordial congratulations on the flourishing condition of our schools of education and seminaries of learning. From the primary institutions where instruction is initiated, to the colleges where it is consummated, the propitious influence of knowledge is observable. Much indeed has been done to promote the interests of education, but in such a cause liberality will rarely degenerate into profusion. The stability and duration of republican governments depend upon the ascendency of knowledge and virtue. The mind duly enlightened, and the heart properly cultivated, can never submit to the dominion of anarchy or despotism.

While on this important subject of instruction, I cannot omit to call your attention to the academy for female education, which was incorporated last session at Waterford, and which, under the superintendence of distinguished teachers, has already attained great usefulness and prosperity. As this is the only attempt ever made in this country to promote the education of the female sex by the patronage of government; as our first and our best impressions are derived from maternal affection; and as the elevation of the female character is inseparably connected with the happiness at home and respectability abroad, I trust you will not be deterred by common place ridicule, from extending your munificence to this meritorious institution.[12]

The constitution of this state was formed nearly forty-three years ago. And considering the circumstances under

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[11] Chap. 229, passed April 14, to provide against infectious and pestilential diseases created a board of health in the city of New York, and contained numerous details relating to sanitary regulations applicable to that city, including quarantine administration. The act also contained sanitary provisions applicable to other parts of the state.

[12] Chap. 106, passed March 24, incorporated a female seminary in the village of Catskill.

which it was established, in the midst of war and commotion, and without the benefits of much experience in representative government, it is not a little surprising that it is so free from imperfection. Attempts have been made at various times to call conventions to introduce alterations, which have only succeeded in a single instance, probably from an apprehension that an innovating spirit might predominate, and destroy, instead of consolidating this temple of freedom and safety. Parties are the natural offspring of republican government. Wherever freedom exists, it will be manifested in differences of opinion with respect to the best mode of promoting the public welfare. And when these contentions spread over society, they form parties; and mingling sometimes with private views and local interests, degenerate into faction, which seeks its gratification in violation of morality, and at the expense of the general good. And such is the proneness of human nature to cherish the spirit of contention, that we often see the continuance of parties after the cessation of the producing causes. While this state has made rapid and signal advances to prosperity, it has been more obnoxious to the excitement of party than any member of the federal union. Even during the gloomy periods of the revolution, this spirit was exhibited in a variety of shapes, and since that time it has scarcely ever ceased to agitate society. After giving full weight to the operation of other assignable causes, we are forced to conclude that there is a radical defect in the constitution of our government; that it either wants some essential check against the progress of party, or that it contains in its arrangements the elements of discord and excitement. The assembly, which is the most numerous branch of the legislature, and which is annually chosen, elects every year from the senate, four persons who, together with the governor, constitute a council of

appointment.[b] The offices in the gift of this council are remunerated by salaries or fees to the amount of a million of dollars annually. Combinations will be formed to obtain the control of this enormous patronage. And they will attempt to influence in the first place the elections of the people, by dictating under the forms and discipline of party; secondly, the selection of the appointing power; and thirdly the operations of that institution. And when no leading measures of the government have been impeached, and no important differences of opinion pretended, endeavors are not unusual to cherish the spirit of discord by conjuring up the shades of departed controversy, by appealing to the vindictive feelings of disappointment, or exciting the cravings of ambition and cupidity. With this principle of irritation in our constitution, the hydra of faction will be in constant operation, endeavoring to work its way to power, sometimes by open denunciation, at other times by secret intrigue, and always by artful approaches. The responsibility of public officers, is essential to the due performance of their trust, and is demanded by the properties of delegated power, and the best interests of the community. This council, as constituted, is almost entirely destitute of this essential requisite. The political tranquillity of the state demands a different arrangement of the appointing power. And I have no hesitation in recommending a convention for this and such other purposes as may be imperatively required by the public welfare. And I do this under a full persuasion that the powers of the convention cannot transcend the objects committed to their cognizance by the concurrent act of the legislature and people: — that the landmarks of security to liberty, property, religion and life, will be inviolably preserved and more firmly established; and that the measures

[b] Const. 1777, § 23.

which will be adopted will have a benign influence in preserving the harmony of the community, and elevating the reputation of the state.[13]

Your immediate attention in filling up the vacancy in the senate is required in consequence of the position of the United States in relation to some of the powers of Europe.[14]

And while it is understood to be at all times important to select from our most enlightened and experienced statesmen for that high trust; it must be admitted that it is peculiarly so at the present crisis, whether we refer to our foreign or domestic concerns. The depression of our manufactures, the disordered state of our currency, the diminution of the national income, and the derangement

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13 The Assembly committee which had under consideration the part of the Governor's speech, relative to the Council of Appointment, presented an elaborate report on the 18th of January, substantially following the Governor in the discussion concerning the Council, saying among other things that "the number of which the Council of Appointment consists renders it at once impossible for that body to possess the requisite information on the various points upon which it becomes their duty to decide; hence, their continual liability to be imposed upon and deceived by misrepresentations which it is out of their power to detect." The committee recommended a convention to consider the parts of the constitution relating to the Council of Appointment, Council of Revision and the qualifications of voters at elections, and with such other powers as the legislature might deem it proper to recommend.

On the subject of the Council of Revision, the committee expressed the opinion that "the right of judging of the constitutionality and expediency of bills which have passed the Senate and Assembly, is better disposed of by most of our sister states. Experience has clearly demonstrated, that this power may be safely vested in the hands of your chief magistrate;" and while no specific instance was pointed out from which any evil consequences had resulted, it was believed that the "body in which this power is vested, ought, at stated periods, to be answerable to the people for a faithful and judicious exercise of it." The committee favored an extension of the right of suffrage to include the militia. The committee presented a bill for a convention, but it was not passed at this session.

14 An act, chap. 2, which became a law on the 7th of January, provided that the legislature should, on the 8th, elect a Senator in place of Rufus King whose term had expired. Mr. King was re-elected.

of the commercial interest demand the solemn consideration of the national government, and the exercise of the best talents of the country. But when we extend our view to our foreign relations and consider the points which remain to be adjusted with Great Britain and Spain, the importance of a judicious selection is greatly enhanced. The pacific policy of the national administration is entitled to our cordial approbation, for we should be blind to our true interests were we to embark in hostilities even with a feeble power, unless a measure of this decided character is enjoined by considerations essentially affecting the honor and welfare of the nation. Every year of peace will consolidate our strength, improve our resources, and increase our population. And by the uninterrupted progress of our internal improvements, and the continued cultivation of our primary interests we shall before a long time present such a formidable power, that policy will unite with justice in conceding to us without the application of force all that we ought to require from foreign nations. But if in the meantime aggressions shall be committed of such a character that an appeal to the sword is demanded by irresistible considerations, I trust that there will be an entire union of sentiment and exertion in vindication of the violated rights and honor of our country. Nor can I conceal on this occasion the deep anxiety which I feel on a subject now under the consideration of the general government; and which is unfortunately calculated to produce geographical distinctions. Highly important as it is to allay feelings so inauspicious, and to cultivate the most friendly communion with every member of the confederacy, yet I consider the interdiction of the extension of slavery a paramount consideration. Morally and politically speaking, slavery is an evil of the first magnitude; and whatever may be the consequences, it is our duty to prohibit its progress

in all cases where such prohibition is allowed by the constitution. No evil can result from its inhibition more pernicious than its toleration; and I earnestly recommend the expression of your sense on this occasion, as equally due to the character of the state and the prosperity of the empire.[15] The people of the United States are distinguished from all other nations by the exercise of the right of self government. Every authority proceeds directly or indirectly from them. From the primary assemblies of the people in town meetings to the county conventions of supervisors, or to the municipal authorities of cities or villages, and from their representatives in the state legislatures, to the delegates of districts or states in the congress of the United States, may be distinctly seen the legitimate source of all sovereign authority, the paramount ascendency of the people. Seated in a country of vast extent, with a fertile soil and benign climate, adapted by nature for the

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[15] The Governor's observations had reference primarily to the pending discussion in Congress relative to the admission of Missouri into the Union, and to the question whether slavery should or should not be prohibited or limited in the new state.

The views of the Legislature on the Missouri question were expressed in the following concurrent resolutions, which were adopted in January, 1820:

"Whereas the inhibiting the further extension of slavery in these United States, is a subject of deep concern among the people of this state; and whereas we consider slavery as an evil much to be deplored, and that every constitutional barrier should be interposed to prevent its further extension; and that the constitution of the United States clearly gives congress the right to require, of new states not comprised within the original boundaries of these United States, the prohibition of slavery as a condition of its admission into the union—Therefore,

Resolved, That our senators be instructed, and our representatives in Congress be requested to oppose the admission as a state into the union, any territory not comprised as aforesaid, without making the prohibition of slavery therein an indispensible condition of admission. Therefore,

Resolved, That measures be taken by the clerks of the Senate and Assembly of this State, to transmit copies of the preceding resolution to each of our senators and representatives in congress."

The act of Congress of March 6, 1820, which provided for the admission of Missouri as a State, prohibited slavery in that part of the Louisiana purchase north of thirty-six degrees and thirty minutes north latitude.

display of the faculties and energies of man, and holding in their hands the destinies of free government, they are called upon to present a great example for the imitation of posterity and the benefit of the world in the cultivation of religion and morality, in the diffusion of knowledge, in the advancement of the arts and sciences, and in the promotion of all that can confer honor and happiness on nations.

But if they shall pursue a different course; if they shall shut their ears against the warning voice of truth, and their eyes against the light of experience, and rush precipitately upon the rocks and shoals which have hitherto shipwrecked the interests of the human race; then indeed will the hopes of patriotism and the prayers of benevolence be equally unavailing, and the brightest prospects that ever opened on the world be extinguished in darkness. Let us remember that in proportion to the extent and population of this state, and in proportion to the faculties with which we have been endowed by providence, shall we participate in this responsibility; and let it be deeply impressed on our minds that we can never transmit a great example nor an illustrious reputation to future generations, without cultivating with unremitted attention and primary devotion, those cardinal interests which constitute the happiness of individuals, and the prosperity of nations.

DE WITT CLINTON.

Albany, January 4, 1820.

SPECIAL MESSAGES.

January 7. To the Assembly: Transmitting a resolution received from the House of Representatives of South Carolina declaring it inexpedient to approve the North Carolina proposition relative to the method of choosing presidential electors; also a resolution adopted by the Legislature of Pennsylvania, recommending an amendment to

the federal constitution providing that "Congress shall make no law to erect or incorporate any bank or other monied institution, except within the district of Columbia; and every bank or other monied institution which shall be established by the authority of congress, shall, together with its branches and offices of discount and deposit, be confined to the district of Columbia."

Also the following preamble and resolution adopted by the General Assembly of Connecticut on the 5th day of May, 1819.[16]

"*Whereas,* it has been represented to this assembly, by a number of the citizens of this state, that they are largely interested in navigation by means of steam boats or vessels under patents, legally granted by the authority of the United States, and that by certain acts of the state of New York, passed on the 27th of April, 1798, the 11th of April, 1808, and the 9th of April, 1811, granting to certain persons in that state and their associates, the exclusive right and privilege, for the term of about thirty years, of navigating the waters of said state of New York, with every kind of boat or vessel, moved by steam or fire, they are precluded from the use of their property, in the navigable waters of the state of New York.

And whereas, said citizens claim that said acts are an infringement of their rights, under the constitution and

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[16] The Assembly committee to which the Connecticut communication was referred, presented a report on the 14th of April, citing the statutes concerning steamboat privileges, and stating that several applications had been made to the Legislature by citizens of New York and of other states for the repeal or modification of such statutes, but that all such applications had been rejected. The committee also said that the validity and constitutionality of the statutes complained of had been recognized in the highest judicial tribunal of the state, and that for these reasons it was inexpedient for the Legislature to enter into the consideration of the subject. The Governor was requested to communicate the Assembly's action to the executive of Connecticut.

The steamboat acts (1787, chap. 57; 1798, chap. 55; 1803, chap. 94; 1807, chap. 165; 1808, chap. 225; 1811, chap. 200) were sustained in Livingston v. Van Ingen (1812), 9 Johns. 507; North River S. B. Co. v. Livingston (1825), 3 Cow. 713; but see Gibbons v. Ogden (1824), 9 Wheat. 1.

laws of the United States, by which, as citizens of one state, they are entitled to all the privileges of citizens in the several states,[c] and have a right, as they conceive, to the free use of the navigable waters of each state, in vessels or boats, whether moved by the force of steam or otherwise, provided they conform to the laws of the United States.

The said citizens also state, that by some of the provisions of the said acts, they are hindered or greatly embarrassed, in the prosecution of their rights before the proper tribunals, and have solicited the interposition of this assembly in their behalf.

And Whereas, This assembly, have full confidence, that if said acts, on a revision by the legislature of the state of New York, shall be found to infringe the rights of the citizens of this state, they will be so modified, as to remove all reasonable grounds of complaint.

Resolved, That his Excellency the Governor of this state, be requested to transmit to his Excellency the Governor of the state of New York, this resolution and the subject matter thereof, that it may be laid before the legislature of that state."

January 11. To the Assembly: Transmitting a report from the sheriff of Niagara county relative to the removal of certain intruders on Grand Island, and recommending that "provision be made to defray his expenses, and to prevent a repetition of trespasses and intrusions on public property."[17]

January 12. To the Assembly: Transmitting a communication from the Secretary of the United States requesting that copies of the New York statutes be furnished for the use of the departments at Washington, and citing the Massachusetts rule that four copies of the statutes

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[c] U. S. Const. art. 4, § 2, clause 1.

[17] Chap. 249, passed April 14, made an appropriation for the expenses of the sheriff in removing intruders from Grand Island. Legislation intended to provide for the care of Grand Island, and a more summary remedy for the removal of intruders thereon was recommended, but not enacted.

enacted at each session be transmitted to Washington "one for the use of each of the two houses of Congress, one for the President of the United States, and one for the library of Congress."[18]

January 17. To the Senate: Transmitting the annual report of the superintendents of the Brothertown and New Stockbridge Indians.

January 17. To the Senate: Transmitting a communication from the comptroller, with an accompanying letter from the managers of the literature fund lottery recommending amendments to the lottery law.[19]

January 18. To the Assembly: Transmitting a report from the free school society of New York.

January 19. To the Senate: Transmitting the annual report of the inspector general of staves and heading.

January 21. To the Assembly: Transmitting the arsenal returns of the commissary general of ordnance and military stores.

January 21. To the Assembly:

"Gentlemen.—I submit to your consideration a memorial of the surviving officers of the revolutionary army, to the congress of the United States, and a copy of certain proceedings of the legislature of South Carolina, on the same subject. And I make this communication under the full persuasion, that it will afford you satisfaction to aid, with the influence of this state, the just claims of those brave and patriotic men, who, in the hour of danger and dismay, devoted every effort in their power to establish our national independence.

De WITT CLINTON."

Albany, 21 January, 1820.

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18 Chap. 19, passed January 28, provided that four copies of the laws passed at each session of the Legislature be transmitted to the Secretary of State at Washington.

19 Chap. 28, passed January 28, contained several amendments to the lottery law, intended to make its provisions more effective.

The accompanying memorial was addressed to Congress, and sought an adjustment of claims for half pay alleged to be due to the officers of the Revolutionary Army under a resolution of Congress, adopted on the 21st of October, 1780 that "half pay for life should be allowed to the officers of the Revolutionary Army who should continue in service to the close of the war," and under another resolution adopted on the 17th of January, 1781, that the "officers, who by the reform of the army might be reduced, should be allowed half pay for life as well as the officers who should continue in service to the close of the war." The memorial also stated that on the 22d of March, 1783, Congress arbitrarily resolved that the "half pay for life should be commuted for five years full pay." This amount was afterwards put into certificates which it was alleged had little value, and on which only a small part of the interest was paid. Congress was urged to fulfil the agreement made during the war, by which it was asserted that the officers serving as provided by the resolutions, had acquired a vested right in the half pay of which they could not be deprived by Congress without their consent. The memorial quoted from a letter written by General Washington June 18, 1783, in which, speaking of the claim, he said:

"I may be allowed to say, it was the price of their blood and of your independence — it is therefore more than a common debt — it is a debt of honor; it can never be considered as a pension or gratuity, nor cancelled until it is fairly discharged."

January 26. To the Assembly: Transmitting the resignation of James Cochran as a regent of the University.[20]

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[20] William A. Duer was chosen regent in place of James Cochran, resigned.

February 4. To the Assembly: Transmitting the annual report of the Adjutant General on the state of the militia.

February 7. To the Assembly: Transmitting a communication received by the Governor from Richard Varick, president of the Merchants Bank of New York, giving in detail proceedings relative to the defalcation stated in the special message of April 1, 1819, and showing why the bank, in which the state was a large stockholder, had not been able to continue the payment of dividends.

February 10. To the Assembly: Transmitting a resolution adopted by the Ohio legislature approving the Pennsylvania proposition for an amendment to the federal constitution limiting the power of Congress as to the establishment of banks. See special message of January 7.

February 11. To the Senate:

"Gentlemen.— I have the honor to transmit to you the minutes of a conference with the representatives of the Seneca Indians. I respectfully recommend to your favorable consideration, the objects suggested by them; and as I understand that there is now a bill before you, relative to the ferry at Black Rock, it may be deemed proper by you to consider one of the requests of the Senecas in connection with the other provisions contained in that bill.[21]

De WITT CLINTON."

Albany, 11th February, 1820.

The memorial referred to the Niagara River ferry privilege under which Seneca Indians had a right to pass over the ferry toll free, and stated that the ferryman was unable

[21] A statute was passed at the next session (chap. 194, 1821) which contained the provision "that no ferriage shall be demanded or received, for ferrying across the said river any of the Indians of the Six Nations, and that the Indians of the said Six Nations applying for that purpose, shall be ferried across the said river free of expense."

to discriminate and determine what Indians were entitled to the privilege, that the Six Nations also wished to use the ferry without paying toll, and that the ferry lease would expire soon. The memorial also requested the appointment of a commissioner or attorney to act for the Indians in their negotiations with the whites, also that a place of religious worship be provided, and that aid be given to enable them to acquire a better knowledge of agriculture. The memorial also alleged that the Indians had been defrauded in the sale of their reservation on the Genesee River, that the land called Bayard's Reservation had been purchased by Oliver Phelps, but that no equivalent had been realized therefor by the Indians. The memorial also asserted that the Indians were deprived of the right of ferriage on one side of the river on the Cattaraugus reservation.

February 15. To the Senate:

"GENTLEMEN.—I enclose an application of Peter Otsequette and I think that the interests of the state, as well as of the applicant, may be promoted by authorizing an arrangement on this subject.[22]

DE WITT CLINTON."

Albany, 14th February, 1820.

February 15. To the Assembly: Transmitting a resolution adopted by the legislature of Indiana approving the Pennsylvania proposition to amend the federal constitution by limiting the power of Congress as to banks.

February 25. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

February 28. To the Assembly: Transmitting a communication from the Governor of Connecticut, containing

[22] Chap. 49, passed February 29, 1820, contained provisions for the relief of the heirs of Peter Otsequette, who had acquired interests under an act for his benefit passed March 18, 1791.

papers explaining his inability to attend as a witness in the pending inquiry against Judge Van Ness.[23]

February 29. To the Senate: Transmitting a communication from the New Stockbridge Indians.

March 1. To the Senate: Transmitting a report from the commissioners for improving the navigation of the Hudson River. [See note 4.]

March 2. To the Assembly:

"GENTLEMEN.—I now transmit to you an important communication from the honorable Gideon Granger; and after having had it under deliberation several days, I am persuaded that it is well worthy of your consideration, whether the interests of the state may not be essentially promoted by the purchase of the rights of the Holland land company, and of Messeurs Willenks of Amsterdam, if it can be accomplished on proper terms.

This measure, in a financial point of view, may be rendered beneficial. It will relieve a considerable portion of our population from evils which are actually experienced, and from an influence which may be injuriously exercised. It will enable the state to extend encouragement to the meritorious settlements which have already taken place; and it will unquestionably advance the cultivation, augment the population, and promote the prosperity of a fertile and extensive country. I therefore recommend that

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23 The Van Ness inquiry was instituted by the Assembly in consequence of the publication in the *New York American* of an article charging William W. Van Ness, a justice of the Supreme Court, with improper conduct in connection with the incorporation of the Bank of America. The publication was on the 26th of January, 1820, and on the 28th a committee was appointed by the Assembly to investigate the complaint. After a careful investigation and examination of many witnesses, the committee presented its report on the 5th of April, expressing the opinion that there was nothing in the official conduct of the Honorable William W. Van Ness that required the interposition of the constitutional power of the Assembly. No further proceedings were taken in the matter.

a negotiation, subject to the ratification of the legislature, be authorized for that purpose.

DE WITT CLINTON."

Albany, 1st March, 1820.

The following is the communication from Mr. Granger:

ALBANY, 22*d February*, 1820.

His Excellency, DE WITT CLINTON.

SIR.— Often have I revolved in my mind the substance of what I now put to paper for your contemplation.

It has appeared to me, for many months, that the state of New York ought to purchase of the Holland Companies, all their lands, together with all their bonds, covenants, and floating property of every kind, in the Genesee country.

My reasons for this opinion are—

1st. It is dangerous in any government to allow so extensive a portion of her territory to remain under the control of foreign authority as it subjects society to the dangers of a foreign influence; and as it necessarily retards the improvements of the country, by leaving foreigners to judge as to the reservations they will preserve, and otherwise.

2dly. It is injurious to our citizens to have their own, and their families safety and comfort dependent upon a great foreign company, who can have for them no sympathies, and must be considered as regarding only their own interest.

In this state there are, west of the Genesee river, from eighty to one hundred thousand people, subject to the will of the Hollanders for their prosperity and happiness. They are an active, enterprising yeomanry, as useful members of society as any other located portion of equal numbers. By the existing laws of the state, even their improvements, (in these times of the absence of all moneys,) are

liable to be so sold at auction for a trifling debt, arising from the ordinary credits in life, or a lawyer's or a physician's bill.

They are so located geographically, as to be able to remove, in one week, from this state to the north parts of Ohio and Indiana, countries in all respects as desirable as the one they occupy, and where the rights of the farmer are guarded by laws which ensure, that his freehold shall not be taken from him, for less than three fourths of its cash value, estimated by freeholders of his own country.

3dly. If I am not extremely mistaken, although the fee to these lands appears on our records as belonging to a small number of individuals, yet in fact the lands or their avails, secured by what are termed certificates or scrip. belong to a great number of individuals, scattered over the kingdoms of Holland, and French and Austrian Flanders. From the length of time since these foreign companies were formed, approaching thirty years; from the great vicissitudes which have happened to the people of those countries, by the wars and convulsions which shook the civilized world, and the progressive change of generations, it is apparent to my mind, that these companies, for the relief of the people of Belgia, will find it necessary to force their collections.

It is no less apparent, that in the present state of our country, though these yeomanry have effected much, and deserve much, it will be impossible for them to meet their instalments, notwithstanding the vast increase of value derived from their labors and resources.

The irresistible inference is, that if the state of New York does not speedily adopt a magnanimous and liberal course of policy, we shall be deprived of a very considerable portion of our valuable yeomanry, who will leave us with feelings of disgust, arising from the evils they have suffered in this state, instead of carrying with them, as otherwise the few who may migrate under any circumstances

will do, that affection and confidence which give strength and influence abroad; while at the same time, the prospect of these foreign companies, being able to close this distant and important concern, if not defeated, will be materially lessened by these migrations.

4thly. The Holland companies have about one million and two thirds of a million of acres of unsold land, much of which is considerably valuable; the remainder inferior in quality and location. They have also between four and five millions of dollars in good bonds, covenants and mortgages.

From the facts herein before disclosed in relation to the actual state of the companies; from their distance, and the course of business in Holland, as well as from the circumstance, that in the years 1818 and 1819, I was applied to by gentlemen of extensive wealth, to become a member of a company to effect a purchase of these titles, rights and claims, and was assured that the lands could be purchased for one dollar or one dollar twelve and half cents per acre; and the bonds, mortgages &c. at a large deduction from the face of them, I am convinced that a purchase might be effected on terms highly advantageous to the state; and could it be effected on such terms as I have understood, perhaps incorrectly, it would produce the following beneficial effects; assuming however, these data, that the price will not materially differ from five millions of dollars, which may rest on a long credit, eventually payable by instalments, and drawing an interest of four per cent. annually.

1st. It will produce a greater saving and profit to the state, than the whole expenses of the great canals, and the clearing of the Hudson in the region of vessel navigation.

2dly. It will remove a great foreign influence, which one day or other may, and probably will, do essential injury to this commonwealth.

3dly. It will save the settlers from being oppressed by a company who cannot be presumed to feel for their sufferings, and at a period of general distress.

4thly. It will inspire them with confidence, and give fresh life and spirit to their industry.

5thly. It will unshackle the different reservations, open the country generally for improvement, enlarge our population, and consequently our sources of revenue.

The difficulty to be encountered is, to provide for meeting promptly the interest of the stock; most of it will doubtless come from the instalments of principal or interest paid in by the settlers; perhaps all of it, and possibly a balance, which may be put out at interest to meet the principal; though in the present state of society, we ought not to be sanguine in our expectations, and prudence will require, if such a negotiation should be made, that by law, the executive shall be vested with ample power to preserve the credit of the state.

No time more favorable than the present for this great, and, in my opinion important operation, can ever be expected to exist.

1st. Europe is at peace — her war debts mostly funded, and the interest of money on long loans very low, when well secured.

2d. Full confidence exists there in the character of our funds, and the stability of our government.

3d. Great excitement exists among these hundred thousand yeomanry, and the interests of the state, and of the foreign companies, as well as the happiness of these people, demand that it be allayed in some reasonable manner.

How can this be done, so as not tarnish our own fame — to neglect our own citizens, or do injustice to others? I can perceive no way, but by a purchase on moderate, fair and reasonable terms.

It is certain that things cannot remain as they are; it is certain, that when one-tenth of our population, located in a compact body, demand redress, a wise government will listen to their griefs; and it is no less certain that this demand is now made.

These people boldly ask, what government but this ever gave greater privileges to those who do not fight her battles, or take care of her interests, than to her own citizens?

I have felt it a duty, as one of the guardians of the people, to submit the foregoing observations, for your deliberate consideration.

I have the honor to be, sir,
Most respectfully yours, &c.
GIDEON GRANGER."

March 7. To the Assembly:

Objections by the Council of Revision to a bill "relative to the Roman Catholic Benevolent Society in the city of New York." [24]

"Because, by the third section, a devise, contained in the last will and testament of Robert Finn, late of the city of New York, deceased, of a house and lot of ground, in the said city, to the trustees of Saint Patrick's cathedral and of St. Peter's church, in trust, for the benefit of the Roman Catholic Orphan Asylum, is made valid and effectual in the law, to vest all the estate of the said Robert Finn, in the said trustees, according to the provisions of the will. The devise here alluded to, is either valid or not valid in law. If valid, then the provision in the bill is entirely useless. If not valid, as the bill evidently supposes, then the house and lot, upon the death of the said Robert Finn, either descended to his heirs-at-law or escheated to the state for the want of competent heirs. In the latter case, the legislature might have released for the charitable uses declared in the will, all the right and title of the people of this state. But in the other case, of there being competent heirs, (and that is the ground assumed by the bill,) the legislature cannot divest those heirs of the estate, for any purpose what-

[24] The bill, relative to the Roman Catholic Benevolent Society in the city of New York, was not passed over the veto, but another bill intended to obviate the objection presented by the Council as to the rights of the heirs of the testator was passed, and became a law, chap. 127 on the 1st of April.

ever, without their consent, or without making them just compensation."

March 31. To the Senate: Transmitting a communication from the Adjutant General's department in response to a Senate resolution requesting information as to the "field officers and staff officers belonging to the artillery and cavalry, and the number of companies belonging to the artillery and cavalry, and the number of companies belonging to each corps, designating in the return the number of companies and officers of each grade, within the bounds of each division of infantry in this state, the city and county of New York excepted."

April 11. To the Assembly:

"Gentlemen.—I have received a communication from the person appointed to take charge of the fortifications on Staten Island, representing that in consequence of a storm which occurred in January last, considerable injury was done to the property of the state in that quarter. A letter marked No. 1, from Arthur Smith, Esq. the superintendent employed by the commissioners in the erection of the fortifications, will explain his views on the subject; and the accounts marked No. 2 are submitted to you, because no provision is made by law for their payment. The paper marked No. 3, will exhibit the state of the negotiation for the transfer of these works to the United States.

I also submit to you a representation from the commissary general, marked No. 4.[25]

De WITT CLINTON."

Albany, 11th April, 1820.

The communication from Arthur Smith related to the condition of the fortifications, and showed that unless the roof was immediately repaired great damage would result to the structure. He thought that unless negotiations with

[25] Chap. 249 appropriated a small amount for the preservation of the fortifications on Staten Island.

the general government were likely to result in an early sale, an expenditure should be made for general repairs, which he estimated would cost $12,500, though temporary repairs could, he thought, be made for $2000.

No. 2, is a letter from William Duston, containing a detailed account of the destructive effects of the storm.

No. 3 is a letter from Ferris Pell, saying that the engineers who examined the work had not yet made their report at the War Department, and that negotiations were consequently suspended. It also appeared from this letter that Fort Tompkins had not been completed, and that owing to the exposed condition of a part of its walls serious damage was being caused by the action of the elements.

The Commissary General submitted a statement showing the amounts which might be actually or contingently needed in his department for the ensuing year.

April 14. The Legislature adjourned without day.

1820. NOVEMBER. LEGISLATURE, FORTY-FOURTH SESSION.

DE WITT CLINTON, Governor.

FIRST MEETING.

The Legislature met the 7th of November, at which time the Governor delivered the following

OPENING SPEECH.

GENTLEMEN OF THE SENATE AND OF THE ASSEMBLY.—On the recurrence of an election of president and vice-president of the United States, the annual meeting of the legislature is transferred from its usual period to this time, in consequence of the choice of electors by that body; and notwithstanding an adjourned session has been considered expedient after the transaction of extraordinary business,

yet it has been usual for the executive to make his communication at the first meeting; and as this measure is recommended by its salutary tendency, and will enable the legislature in its recess to bestow deliberate attention on the subjects recommended to their consideration, and to consult the sense, and understand the views of their constituents, I shall not hesitate to comply with the customary rule on this occasion.

In adverting to the object of this anticipated meeting it will readily occur to you, how much better calculated it would be to promote economy, and to preserve the purity of republican government, and how much more consonant with the representative principle, if the choice of electors were brought nearer home to the people. Indeed, it must be considered a striking imperfection in the national constitution, that no uniform rule has been prescribed on this subject. In some states, electors are chosen by the people by districts; in others by a general ticket; and in a few by the legislature, the last mode is certainly the most objectionable. A body not numerous, and selected for several months previous to the period of action, is exposed to the operations of intrigue, and is not so safe a depository of this great trust as the community at large. In some cases, a minority of the people may choose a majority of the legislature. The election of that body in times of public tranquillity, may be made without much reference to this object, and there is such a considerable intervening time before the choice of electors, that a full and fair expression of the public sentiment may not take place, or may be defeated. The people are certainly less liable to improper influence, than any other body of men, and in their purity, discernment, and public spirit, we must rely for the stability and permanence of our republican institutions.

When I had the honor of occupying a seat in the legislature, I was so forcibly impressed with considerations of this nature, that I esteemed it my duty to introduce an

amendment to the constitution predicated on district elections by the people. This principle was sanctioned at that time, and since, by the legislature; but it has never been engrafted into the constitution. As it may be supposed that those states where district elections are established, will not be in a situation to express an undivided opinion, and will therefore be placed in a worse position than those where a general choice prevails, I would suggest the expediency of providing in future for a choice by the people of electors by general ticket, until an uniform rule by districts is constitutionally established. This will place the choice of the principal magistrates of the nation where it ought to be; more completely within the control of the sovereign authority. And as there are now two intervening bodies, between the people of this state, and the election of president and vice-president, I see no reason why this principle of exclusion should be applied almost entirely to them.

In the course of your proceedings, you will also be called upon to elect a senator of the United States.[1] The position of our national concerns will undoubtedly demand the utmost circumspection, as well on this subject, as on the more immediate object of your meeting. In order to meet the deficiencies of the national revenue, great retrenchments must be made in our expenditures, and wise plans of finance must be adopted. Our resources may be cherished, and the evils of heavy taxation or increasing debt, may be averted by the abolition of useless offices, by the diminution of expensive establishments, and by the cultivation of that economy which is most congenial with the simplicity of republican government, and which is required by the great pressure on the nation; keeping, however, always steadily in view the public defence, and the general safety. In order to resuscitate the prosperity of the community, it

[1] Martin Van Buren was elected United States Senator at this session.

is also necessary to cherish the interests of productive industry,[2] and to promote the internal improvement of the country.

It is to be regretted that the collision, which took place at the last session of congress, relative to the prohibition of slavery in new states, should have been attended with so much irritation; and that it should be considered as an attack on the local authorities, and an attempt to violate the rights of property. In states where slavery has been established by law, it is not in the power of the national government to interfere; and all regulations on this subject must proceed from the local government; but in the admission of new states into the union, it is the duty of congress to protect the great obligations of morality; to enforce the principles of the American revolution, and to consult the paramount and permanent interests of the empire.[3]

As a member of the American confederacy, it is not only our duty, but our interest, to sustain the respectability, and to promote the authority of the national government, by a patriotic and enlightened exercise of our suffrages, and

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[2] The general manufacturing act of 1811 was revived and continued in force by chap. 14, passed January 26, 1821.

[3] On the 13th and 15th of November, 1820, the Assembly and Senate, respectively, adopted the following concurrent resolution:

"*Whereas*, The Legislature of this state, at the last session, did instruct their senators and request their representatives in congress, to oppose the admission as a state, into the union, any territory not comprised within the original boundaries of the United States, without making the prohibition of slavery therein, an indispensable condition of admission; *and whereas*, this legislature is impressed with the correctness of the sentiments so communicated to our senators and representatives. Therefore,

"*Resolved*, That this legislature does approve of the principles contained in the resolutions of the last session; and further, if the provisions contained in any proposed constitution of a new state, deny to any citizens of the existing states, the privileges and immunities of citizens of such new state, that such proposed constitution should not be accepted or confirmed; the same in the opinion of this legislature, being void by the constitution of the United States.[4]

And that our senators be instructed, and our representatives in congress be requested, to use their utmost exertions to prevent the acceptance and confirmation of any such constitution."

[4] U. S. Const. art. 4, § 2, clause 1; see also 14th Am.

by contributing all our energies to establish a wise and public spirited administration. But in attending to measures so important, we ought not to overlook the duties which we owe to ourselves. Our government is complex in its organization; and it is essentially necessary to preserve the state governments in their purity and energy. A free government could never exist in a country so extensive as the United States, without a judicious combination of the federal representative principles. The apprehensions which some of our wisest statesmen entertained at the formation of the constitution, that the state governments would constantly encroach on the powers of the national government, appear not to have been realized. The practical tendency has been in the opposite direction. The power of the general administration has increased with the extension of its patronage. And if the officers under its appointment shall see fit, as an organized and disciplined corps, to interfere in the state elections, I trust that there will be found a becoming disposition in the people to resist these alarming attempts upon the purity and independence of their local governments; for whenever the pillars which support the edifice of the general government are undermined and prostrated, the whole fabric of national freedom and prosperity will be crushed in ruin. I have considered it my solemn duty to protest against these unwarrantable intrusions of extraneous influence, and I hope that the national legislature will not be regardless of its duty on this occasion.[4]

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[4] See special messages of November 16, 21, 1820, and January 18, 1821. The Governor's answer to the resolutions requesting information as to the federal interference in state elections was evidently not satisfactory to the Legislature, for on the 23d and 28th of March, the Assembly and Senate, respectively, adopted the following concurrent resolution:

"*Resolved*, That the accusation made by his Excellency the Governor against the officers of the general government, charging them with interfering, as an 'organized and disciplined corps,' in our elections, and of violating the 'purity and independence of our local government,' has not been substantiated, and is wholly unfounded."

If the ingenuity of man had been exercised to organize the appointing power in such a way as to produce continual intrigue and commotion in the state, none could have been devised with more effect than the present arrangement. We have seen its pernicious influence in the constant commotions which agitate us; and we can never expect that the community will be tranquil, or that the state will maintain its due weight in the confederacy, until a radical remedy is applied. Under this impression, I have heretofore proposed the calling of a convention. The constitution contains no provision for its amendment. In 1801, the legislature submitted two specific points to a convention of delegates chosen by the people, which met and agreed to certain amendments. Attempts have been made at various times to follow up this precedent, which have been unsuccessful, not only on account of a collision of opinion about the general policy of the measure, but also respecting the objects to be proposed to the convention. These difficulties may be probably surmounted, either by submitting the subject of amendments generally to a convention, and thereby avoiding controversy about the purposes for which it is called; or, by submitting the question to the people in the first instance, to determine whether one ought to be convened; and in either case, to provide for the ratification by the people in their primary assemblies, of the proceedings of the convention. This double check will be admirably calculated to carry into effect the sovereign authority of the people; to guard against dangerous interpolations in our fundamental charter; to check a spirit of pernicious innovation, and empirical prescription, and to allay the apprehensions of some of our best and wisest fellow citizens, who, already satisfied with the signal prosperity and high destinies of the state, are unwilling for the sake of some improvements, to encounter the risk of changing materially the features of a constitution, which in its general conformation, is admirably calculated to promote the happi-

ness, to elevate the prosperity, and to protect the freedom of the community.[5]

It affords me the highest satisfaction to renew my congratulations on the successful progress of our internal improvements. Upwards of fifty-one miles of the canal between the Genesee river and Montezuma, including fifteen locks, are under contract, and the whole distance of sixty miles and a quarter, with two additional locks, can be easily finished by the first day of September next. The contracts made during the last season, were on better terms for the state than those on the middle section; and during the present year, they are from thirty to forty percent. lower including the mason work. Thirty miles of the section east from Utica, are also under contract, including twelve locks, and will be completed the next season.

In the progress of these operations, rocks have been excavated at the Little Falls in seventy or eighty days, which it was originally supposed would have taken two years.

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[5] A bill was passed providing for a convention, but it was vetoed by the Council of Revision. See special message of November 20, 1820. The objections presented by the Council were referred to a committee in the Assembly, and this committee on the 9th of January, 1821, presented an elaborate report, opposing the views expressed by the Council, and insisting that the bill ought to be approved as passed. The bill was not passed over the veto, but a new bill was introduced, which was passed, and became a law, chap. 90, on the 13th of March. The bill submitted to the people at the coming general election in April, the question whether there should be a convention to revise the Constitution, and it was also provided that if a majority of the votes were in favor of a convention, delegates to compose the convention were to be chosen on the third Tuesday of June. The convention was clothed with general power to amend or revise the Constitution in any particular. The work of the convention when completed was to be submitted to the people as one instrument, or in distinct propositions as the convention might determine. The act was amended by chap. 256, passed April 3, in relation to returns of elections held under it.

The people approved the recommendation for a convention, delegates were chosen, and the convention was held, beginning its sessions on the 28th of August, 1821, and closing on the 10th of November. The convention prepared a new Constitution, which was submitted to the people and approved at an election held on the 15th, 16th, and 17th of January, 1822. The new Constitution took effect on the last day of December, 1822.

The improvements in the Hudson River, and by canals, to the distance of twenty-eight miles south from Fort Edward, will be effected next season; and it is hoped that the remaining ten miles to Waterford, which will finish the whole operation of the inland navigation of the north can also be accomplished within that period. There will then remain about one hundred miles on the western, and about sixty-eight on the eastern section, in order to realize our whole system of internal navigation. The limitation of the annual expenditure has had a tendency to procrastinate the completion of this great work; and under a full persuasion that the whole can not only be accomplished, but well accomplished in three years at the utmost, from the present period, I earnestly recommend the adoption of plenary and effectual measures for this purpose. The advantages to be gained by this course will be great and striking. The faculties of the state are fully adequate to the operation, and all controversy about the order of completion will be avoided. The civilized world is now in a state of peace; but the symptoms of great and extensive convulsions begin to appear in Europe, and if wars shall unfortunately afflict that portion of the globe, we will perhaps be compelled to assume a defensive attitude against aggressions on the rights of neutrality, which may finally plunge us into hostilities. Now that we are free from great national calamities, and the prices of money, of labor, and of commodities, are uncommonly low, we ought to avail ourselves of the favorable opportunity. The public sentiment is now united in favor of the measure, and the progress of time may create opposition from chimerical apprehensions, from selfish views, from jarring interests, and from local competitions. The increased accommodation and easy communication will immediately create a vast inland trade; and if we only suppose that one hundred thousand tons are annually transported on the western canal, the revenue, at the rate of five dollars a ton for the whole distance, will defray

all the expenses of repairs and superintendence, and extinguish in a short time the whole debt. A step of so decided and energetic a character will also encourage the patriotic state of Ohio to pursue its noble attempt to unite the waters of Lake Erie and the Ohio River. And surely there can be no hesitation in devoting the resources of the state to the speedy and effectual accomplishment of a measure which, in the language of the act of 1817, "will promote agriculture, manufactures and commerce; mitigate the calamities of war, enhance the blessings of peace, consolidate the union, advance the prosperity, and elevate the character of the United States."[6]

The final and complete establishment of an able and respectable board to superintend the general interests of agriculture, is an event of the highest importance; and the exhibitions which have taken place in different counties under the auspices of the local societies, evince increasing improvement in the quality and quantity of the fruits of the earth. Notwithstanding the present indifferent market for the products of husbandry, it is pleasing to perceive the general and rising estimation in which this pursuit is held; the zeal with which it is cultivated; and the prosperity which it has attained. In course of time the natural correspondence between the wages of labor, the price of commodities, and the value of money will be restored. And as the evils now felt arise from arrangements heretofore

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[6] Chap. 36, passed February 9, 1821, authorized the commissioners of the canal fund to borrow $200,000 to be used in canal construction. The act also provided for the appointment of an additional canal commission, to hold office during the pleasure of the Legislature. Additional appraisers were also authorized to be appointed by the Legislature.

Chap. 78, passed March 9th, provided for the improvement of navigation of the Hudson River between Troy and Waterford, for the purpose of connecting with the Champlain canal.

By a clause in the appropriation act, chap. 250, passed April 3, the jurisdiction of the commissioners appointed to make certain improvements in the navigation of Hudson River was extended to include any point or place between the Troy and Waterford improvement and Coeyman's overslaugh.

made on the existence of high prices, all prospective operations will be accommodated to the reduced state of the market; and the country will emerge slowly from the evils with which it is now environed.

Agriculture must look for its principal and solid encouragement to the home market, and this will be improved by the general augmentation of our population, and especially by the increase of that portion of it, which is not engaged in the cultivation of the earth. The manufacturing interest, and that numerous class of the community which will be employed in the inland carrying trade, and the dealers in the sale, purchase, and exchange of commodities, must constitute the most efficient friends of agriculture. The fluctuations of harvests in different parts of the United States, and the differences of productions will frequently produce facilities in the way of reciprocal supply; and the necessities of Europe will almost always create, in a greater or less degree, a demand for our staple articles.

It may be proper on this occasion to call your attention to the expediency of lowering the rate of interest of money; and as the period has arrived when a census of the people of this state ought to be taken, with a view to an equal and just apportionment of the representation in the legislature, I am persuaded that you will perceive the great utility of directing at the same time such other statistical investigations, as may illustrate our resources, and point out the road to increased wealth and prosperity.[7] The discovery

[7] Chap. 110, passed March 16, provided for a census of electors and of other adult free male inhabitants. A census of electors was due at this time as the basis of an apportionment of members of the legislature, but by including other inhabitants without classifying them, the schedules did not show definitely the number of assembly electors. The census was not used for the purpose of an apportionment. The convention which met this year and made a new constitution, changed the basis of legislative representation from electors to inhabitants, and directed that the federal census of 1820 be used in making the next apportionment.[e] The census returns, which were transmitted to the legislature by the Secretary of State on the 15th of

[e] Const. 1821, art. 1, §§ 6, 7.

of an important hydraulic cement will add greatly to the general convenience; and if you shall see fit to encourage the discovery of coal, I feel confident that it will be attended with success, and that the beneficial influence of this measure will be felt in the promotion of manufactures, and in the accommodation of the whole community.

The flourishing condition of our seminaries of education, furnishes additional inducements to continue and to extend the patronage of the state. In six thousand common schools, organized under the act for their establishment, three hundred thousand children are taught, and $160,000 are annually appropriated to the compensation of the teachers. I am informed by the useful and able officer, who presides over this department, that the number of pupils at present taught in our schools is equal to nine-tenths of the whole number of children between the ages of five and fifteen years, which approximates to one-fourth of our whole population. There are probably twenty schools in the state conducted on the Lancasterian system exclusively, and several others which follow it partially, but not so far as to assume a distinctive character. In some of these establishments, several young men have been recently instructed as Lancasterian teachers; and it is to be hoped that this system will be carried into the most extensive operation. There are now upon an average about fifty scholars for every schoolmaster, under the present plan of common schools; and whether the number be great, or be small, the introduction of the Lancasterian method is of importance, for admitting in all cases the competency of the teacher to attend to all his pupils, yet when we consider the rapidity of acquiring instruction under that system, and reflect on the useful habits which it forms, and the

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March, 1822, contained schedules of adult male property owners, and other inhabitants, and also as required by the act, various statistics relative to property, manufactures and products.

favorable impressions which it makes on the minds and morals of those who participate in its benefits, we cannot hesitate to give it a decided preference. The education of youth is an important trust, and an honorable vocation; but it is too often committed to unskilful hands. Liberal encouragement ought unquestionably to be dispensed for increasing the number of competent teachers.

In thirty of the forty incorporated academies, there were the last year two thousand two hundred and eighteen students, of which six hundred and eighty-three were engaged in learning Latin and Greek. The fund appropriated for the benefit of these institutions, is about 320,000 dollars.

In Columbia, Union, and Hamilton colleges, there are five hundred and twenty-two students, and in the two medical colleges, one hundred and ninety-six. The grants to these establishments amount to upwards of 720,000 dollars; and perhaps the whole appropriation for the promotion of education may be estimated at two millions and a half of dollars. Although this sum may appear highly liberal, yet when we look at the resources, population and extent of the state, and consider that knowledge is essential to the happiness and dignity of man; to the existence of republican government, and to national power and glory, we must feel persuaded that more munificent dispensations ought to be afforded for its encouragement and diffusion. And I would particularly recommend the education, at the public expense, of youth distinguished and selected for moral superiority, or pre-eminence of talents and character. A measure of this nature is strictly in unison with the genius of our government, and would have a tendency to restore the equilibrium of society; to mitigate the prejudices which spring up in the freest communities; to develop intellectual resources, which would otherwise be lost to the world, and to excite a spirit of emulation propitious to the interests of knowledge and promotive of the fame and prosperity of our country. When I contemplate the vast resources of

the state, and particularly the immense revenue which will accrue from the completion of its great plans of internal improvement, I entertain a confident expectation that the rising, and future generations will experience the continued and increased munificence of government, exercised in different ways and through various channels, for the promotion of instruction, and the propagation of knowledge.[8]

A growing spirit of improvement has been generally manifested by the militia; and in some sections of the state it has been exhibited in an extraordinary degree. The adoption of a plate and feather for the hat in the city of New York, has given an uniform and military appearance to the infantry; and the great attention which several distinguished officers in that and other places have devoted to the promotion of military knowledge, is entitled to high commendation. During the late war, a brigade of horse or flying artillery was organized in the Atlantic parts of the state. In the formation of the present militia code, this brigade was not recognized, and no provision was made to enforce the attendance on parades of the officers and privates of that part of the brigade that belongs to the city of New York, nor can any court martial be constituted for their trial under the present system. As this is a very useful and efficient institution, I recommend it to your favorable consideration. A laudable provision for the distribution of elementary books in the military art, has been confined to the infantry. The other departments of our military force are anxious to enjoy similar benefits; and on this occasion it may not be improper to mention that an able treatise on artillery has been recently published under the patronage of the national government, and which, as it

[8] The incorporation of Lancasterian schools was provided for by chap. 61, passed February 23, 1821. Chap. 240, passed April 3, contained a provision abolishing the office of superintendent of common schools, and making the secretary of state *ex officio* superintendent. Several local school acts were passed, and also statutes relating to gospel and school lots.

deserves, it is to be hoped will receive your encouragement.[9]

I conceive it an indispensable duty to call your attention once more to the state of our penitentiary system. In corroboration of the observations, which I have heretofore communicated, permit me to state, that the increasing expense, and partial failure of this system, may be principally ascribed to an injudicious organization of its government, and to an inexpedient arrangement of the buildings. The government of our state prisons is intrusted to several very respectable citizens, who act from patriotic motives, and without compensation. The affairs of the establishment are principally managed by officers under their control. When the vigilance of self interest ceases to operate in any institution, its place must be occupied by adequate and powerful substitutions, by imposing responsibility, and by exacting exclusive and undivided attention.

The operation of the present administrations of our penitentiaries is to create a nominal authority in the inspectors, but to invest the substantial control in subordinate agents. The former attend but seldom, and, indeed, a rigid attendance cannot be expected, where officers are not remunerated for their services. The consequences are obvious. These important institutions are almost entirely directed by incompetent men, who were not contemplated nor intended for that purpose, and the pecuniary affairs, as well as the moral discipline of the establishment become distracted and deranged. The state prison at Auburn is, by a late arrangement, modeled on the plan of solitary cells. In London a prison has been recently erected containing seven hundred cells; at Pittsburgh, in Pennsylvania, one is now building of six hundred cells, each six by eight feet. A building on this plan will not be so expensive as on the old one. It will not be necessary to make it so strong; the

[9] Numerous regulations relating to the militia were contained in chap. 211, passed March 31.

prisoners will have no chance of forming conspiracies, and hence all escapes will be prevented. The expense of a military guard would be saved; the duration of punishment might be usefully abridged, and, above all, we might be certainly assured, if not of a reformation that will prevent, of a punishment that will deter, from the repetition of crimes. I am happy to state that the New York Society for the Prevention of Pauperism have instituted an inquiry on the subject of the penitentiary system, which will be attended with favorable results; and that improvements are absolutely necessary may be inferred from the fact, that in all probability there is one convict incarcerated for crime, in every thousand persons composing the population of the state.[10]

It is universally conceded that one of the most pernicious modes of raising revenue is by the establishment of lotteries. The spirit of gambling which it generates, and the demoralizing influence which it exercises, are greatly to be deprecated. With a view to mitigate the resulting evils, the avails have been generally applied to the promotion of education and internal improvements. But it is to be hoped, after the existing grants are satisfied, that this expedient for raising money will be entirely abandoned. In the meantime, I am sorry to say that the evils are multiplied upon us by a forced construction of the powers of congress, and that the local authority of that body over the district of Columbia, exercised for municipal accommodation, is attempted to be erected into an authority to ride over the laws of the states. Such a palpable and mischievous usurpation can never be sustained nor tolerated.

I should do injustice to the feelings which I entertain and cherish, were I not to avail myself of this occasion to communicate to the people of this state, my grateful acknowledgments for the renewed expression of their favorable

[10] Chap. 224, passed April 2, contained numerous provisions relative to prison administration and discipline.

opinion. With a deep sense of my inability and with a humble reliance on the blessings of Almighty God, I shall endeavor to merit the confidence of my fellow citizens, by every proper exertion to promote, in all cases, their individual and collective prosperity, whether I am called on to act exclusively, or in co-operation with the co-ordinate authorities.

DE WITT CLINTON.

Albany, November 7, 1820.

SPECIAL MESSAGES.

November 7. To the Assembly:

Objections by the Council of Revision to a bill passed at the last session "to authorize certain proceedings in chancery to be done by certain county officers."

"1. Because it declares that the first judge of any county, being of the degree of solicitor or counsellor of the court of chancery, shall *ex officio*, be a master of, and examiner in said court; whereas by the 25th article of the constitution, the first judges of the county courts in the several counties shall not, at the same time, hold any other office, excepting that of senator or delegate to congress. The office of a master in chancery is a public office, well known to the law of the land, when the constitution was formed, and it has been a distinct and established office from time immemorial. Masters are said by the common law, to be assistants to the chancellor, and references are constantly made to them, touching accounts and matters of practice, and they are officers of the court and subject to its orders. It is therefore an office within the meaning and spirit of the said prohibition; and the same objection applies to the office of examiner in chancery.

2. Because masters in chancery and examiners in chancery are by the bill appointed by the legislature, those officers, though they are, by law, distinct and definite, are to be conferred by statute, upon certain individuals who now

fill other offices of a totally distinct and independent character, and for which only they are appointed. This new mode of appointing those officers is contrary to the 23d article of the constitution; which declares that all officers, other than those who, by the constitution, were directed to be otherwise appointed, shall be appointed by the council of appointment. Masters in chancery, and examiners in chancery, have hitherto been appointed by the council, and purposely selected and duly commissioned for those trusts, and regularly sworn into office."

The bill was not passed over the veto.

November 9. To the Senate: Transmitting a report of the managers of lotteries, and recommending it to the early and deliberate attention of the Legislature.

November 16. On the 15th, the Senate adopted a resolution "That His Excellency be requested to lay before the Senate, all the information that he may possess in relation to that part of his speech which alludes to the interference of the general government, or its officers, as an 'organized and disciplined corps' in our elections."

On the 16th, the Governor sent the following communication to the Senate:

"GENTLEMEN.—Fully appreciating the patriotic solicitude of the Senate, to prevent all unwarrantable intrusions in the political affairs of the State, I have received their application for information on this subject, with great pleasure, and I shall, in due time, make them a communication, which, I trust, will be satisfactory in its nature, and salutary in its tendency.

DE WITT CLINTON."

Albany 16th November, 1820.

See Special Message of November 21. [See note 4.]

November 20. To the Assembly:

"GENTLEMEN.—As the national government contemplate the erection of a light house, at the mouth of the Genesee

river, I recommend the requisite cession of jurisdiction for that purpose.[11]

De WITT CLINTON."

Albany, 20th November, 1820.

November 20. To the Assembly:

Objections by the Council of Revision to a bill "recommending a convention of the people of this State." [See note 5.]

"1. Because the bill recommends to the citizens of this state, to choose by ballot, on the second Tuesday of February next, delegates to meet in convention, for the purpose of making such alterations in the constitution of this state, as they may deem proper, without having first taken the sense of the people whether such a convention, for such a general and unlimited revisal and alteration of the constitution be, in their judgment, necessary and expedient.

There can be no doubt of the great and fundamental truth, that all free governments are founded on the authority of the people, and that they have, at all times, an indefeasible right to alter or reform the same, as to their wisdom shall seem meet. The constitution is the will of the people, expressed in their original character, and intended for the permanent protection and happiness of them and their posterity; and it is perfectly consonant to the republican theory, and to the declared sense and practice of this country, that it cannot be altered or changed in any degree, without the expression of the same original will. It is worthy therefore, of great consideration, and may well be doubted, whether it belongs to the ordinary legislature, chosen only to make laws, in pursuance of the pro-

[11] Chap. 8, passed November 20, 1820, ceded to the United States for light-house purposes, a parcel of land, not exceeding six acres, on the east side of the Genessee river, at the point of intersection with Lake Ontario. Though apparently not suggested by the Governor, it may be noted here that chap. 164, passed March 27, 1821, ceded to the United States for light-house purposes, a parcel of land not exceeding six acres at or near the mouth of the Oswego river.

visions of the existing constitution, to call a convention in the first instance, to revise, alter, and perhaps remodel, the whole fabric of the government, and before they have received a legitimate and full expression of the will of the people, that such changes should be made. The difficulty of acceding to such a measure of reform, without the previous approbation of the constituents of the government, presses with peculiar force, and with painful anxiety upon the Council of Revision, which was instituted for the express purpose of guarding the constitution, against the passage of laws "inconsistent with its spirit."

The constitution of this state has been in operation upwards of forty years, and we have but one precedent on this subject, and that is the case of the convention of 1801. But it is to be observed, that the convention in that year was called for two specific objects only, and with no other power or authority whatsoever. One of these objects, was merely to determine the true construction of one of its articles, and was not intended to alter or amend it; and the other was to reduce, and limit the number of the senators and members of Assembly. The last was the single alteration proposed, and perhaps even with respect to that point, it would have been more advisable, that the previous sense of the people should have been taken. But there is no analogy between this single and cautious case, and the measure recommended by the present bill, which is not confined to any specific object of alteration or revisal, but submits the whole constitutional charter, with all its powers and provisions, however venerable they may have become by time, and valuable by experience, to unlimited revisal. The Council have no evidence before them, nor does any legitimate and authentic evidence exist, that the people of this state think it either wise or expedient, that the entire constitution should be revised and probed, and perhaps disturbed to its foundation.

The Council, therefore, think it the most wise and safe

course, and most accordant with the performance of the great trust committed to the representative powers under the constitution, that the question of a general revision of it, should be submitted to the people in the first instance, to determine whether a convention ought to be convened.

The declared sense of the American people throughout the United States on this very point, cannot but be received with great respect and reverence, and it appears to be the almost universal will expressed in their constitutional charters, that conventions to alter the constitution, shall not be called at the instance of the legislature, without the previous sanction of the people by whom those constitutions were ordained.

The constitution of Massachusetts was established in 1780, and contains the earliest provision on this subject. It provided, that in the year 1795, the sense of the people should be taken on the necessity or expediency of revising the constitution, and that if two-thirds of the votes of the people were in favor of such revision and amendment, the legislature should provide for calling a convention. The convention now sitting in that state, was called in consequence of a previous submission of such a question to the people. The constitution of South Carolina was ordained in 1790, and in that it is declared, that no convention should be called, unless by the concurrence of two thirds of both branches of the legislature. And the constitution of Georgia, established in 1798, contains the same provision; thus showing, that though the people be not previously consulted on the question, yet a more than ordinary caution and check upon such a measure was indispensable. The constitution of Delaware, of 1792, declares very emphatically, that no convention shall be called but by the authority of the people, and that their sense shall be taken by a vote for or against a convention, and that if a majority of all the citizens shall have voted for a convention, the legislature shall make provision for calling one. The same con-

stitutional provision that no convention shall be called to alter, or amend the constitution until the sense of the people by vote shall have been previously taken, whether, in their opinion, there was a necessity or expediency for a revision of the constitution, has been successively adopted, by the constitution of New Hampshire, in 1792; by the constitution of Tennessee, in 1796; by the constitution of Kentucky, in 1799; by the constitution of Louisiana, in 1812; by the constitution of Indiana, in 1816; by the constitution of Mississippi, in 1817; and by the constitution of Illinois, in 1818.

It would, as the Council apprehend, be impossible to produce higher and more respectable authority in favor of such a provision, and of its value and safety.

2. Because the bill contemplates an amended constitution to be submitted to the people, to be adopted or rejected, *in toto*, without prescribing any mode by which a discrimination may be made between such provisions as shall be deemed salutary, and such as shall be disapproved by the judgment of the people. If the people are competent to pass upon the entire amendments, of which there can be no doubt, they are equally competent to adopt such of them as they approve, and to reject such as they disapprove; and this undoubted right of the people, is the more important if the convention is to be called in the first instance, without a previous consultation of the pure and original source of all legitimate authority. And it is worthy of consideration, and gives additional force to the expediency, and fitness of a previous reference to the people, that time will be thereby given for more mature deliberation upon questions arising upon the constitution, which are always momentous in their nature, and calculated to affect, not the present generation alone, but their distant posterity, and when the legislature may probably have it in their power to avail themselves of a more just and accurate apportionment of the representation in the convention, among the several counties in this state."

According to the Council records, this veto was prepared by Chancellor Kent.

November 21. On the 20th, the Senate, considering further its resolution of the 15th relative to federal interference in state elections, adopted the following:

"*Whereas,* his Excellency the Governor, in his reply to the call of the Senate, for information relative to the general government, or its officers, as an organized and disciplined corps interfering in our elections, has not furnished the Senate with any evidence in support of such charges: *And Whereas,* it is highly improper, that the chief magistrate of the state, should criminate the administration of the general government, without ample testimony in his possession, by reason whereof the good people of this state, may have their confidence in the general government greatly impaired: therefore—

Resolved, That the Senate repose the strictest confidence in the patriotism and integrity of the general government, and will not change such opinion, or yield to any insinuations against such administration, but upon full and satisfactory testimony.

Resolved, That this resolution be published, and the clerk deliver a copy to his Excellency the Governor."

The next day the Governor replied to the Senate as follows:

"Gentlemen.— I have this moment received a resolution of your honorable body, which, as well as the one to which it refers, I shall fully notice at the next meeting of the legislature; and I shall, therefore, at this late hour, pass it over with the expression of my sincere regret, that any branch of the legislature, should, in so unprecedented a manner, lose sight of the respect due to itself, and the courtesy due to a co-ordinate department of the government.

De WITT CLINTON."

Albany, 21st November, 1820.

See special message of November 16.

November 21. The Legislature adjourned to meet the second Tuesday of January, 1821.

1821. JANUARY.

SECOND MEETING.

The Legislature met January 9, 1821.

SPECIAL MESSAGES.

January 12. To the Assembly: Transmitting the annual report of the Brothertown and New Stockbridge Indians.

January 18. On the 16th of November, 1820, the Assembly, apparently following the action of the Senate on the previous day, relative to the same subject, adopted a resolution requesting the Governor "to communicate to this House any evidence in his possession of the improper interference of the officers of the general government, in the local concerns of this state."

On the 18th of January the Governor replied to the Assembly resolution as follows:

"GENTLEMEN.—The resolution of your honorable House, of the 16th November, relative to an intimation in my speech, at the opening of the session, has been respectfully considered and duly appreciated, and I shall now communicate to you, agreeably to your request, the evidence in my possession relative to the 'improper interference of the officers of the general government in the local concerns of this state.'

That many of the officers of the United States, have, for a number of years acted very improperly by interfering in the elections of this state, must be known to every man in the community, who has had opportunities for in-

formation, and whose mind is not steeled by prejudice against the admission of truth; at the last election this influence was manifested in such a variety of shapes, and in such an exceptionable manner, that I considered it my duty to refer to it; and in performing this duty as a magistrate, and in availing myself of a right possessed by every citizen, to express his opinion of the conduct of public men, I did not consider it necessary that I should be provided with documentary testimony, nor did I suppose, that, at an extraordinary session of the legislature, held for a special purpose, it would be deemed advisable to deliberate on any of the matters indicated in my speech; and I was confirmed in this impression, so far as it respects this subject, when I adverted to the resolution of the Senate then before you, proposing to adjourn on the next day, and to a resolution of your house, passed on the 18th day of November, for adjourning on the 20th. Under these circumstances, I thought proper to delay this communication until the present session. And when I make this observation, I must be permitted to state, that whenever I am called upon for information by any branch of the legislature in a proper manner, and in a proper case, I shall always attend to the request with pleasure, but I shall reserve to myself sufficient time to prepare a satisfactory answer:—and the universal understanding in parliamentary practice has been, that if the information requested is afforded in time for full legislative deliberation and decision, no exception ought to be taken.

In animadverting on the obtrusion of extraneous influence in the politics of this state, I was desirous of arresting the progress of a great evil, by attracting the public attention to its predominance; and I was not without hopes, that the national legislature would consider it a fit case for the salutary exercise of its high authorities. In the inquiry which has been recently instituted into the conduct of one of the departments of the national administration,

some of the abuses which will be developed in this message, may be deemed a fit subject for cognizance; and I am persuaded, that the general investigation which has been made, will have a beneficial tendency, even if it be not followed by any measures of punishment.

Considering the immense patronage which must be necessarily intrusted to the executive government of the Union, the constitution of the United States has wisely declared, 'that no senator or representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emolument thereof shall have been increased during such time; and no person holding any office under the United States, shall be a member in either house during his continuance in office; and that no Senator, or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector of President and Vice-President.'[a] The object of these provisions is to preserve the independence of the national legislature, and of the electoral colleges, and to maintain the purity of republican government. The same salutary provisions, for analogous beneficial objects, have been extended to the state legislatures; and all the state constitutions, formed since the proposal of the national constitution in 1787, declare, in substance, that no member of Congress, or officer of the United States shall have a seat in the state legislature.[b] There are in some constitutions variations in the provision, but they all embrace in a greater or less degree the spirit of the excluding principle. In those states which had adopted constitutions before the establishment of a national government, there is of course no constitutional prohibition:—but it is understood, that in such case statutes have been passed to the same effect. Virginia, whose constitution was formed in 1776, has a very compre-

[a] U. S. Const. art 1, § 6, clause 2; art. 2, § 1, clause 2.

[b] See Const. 1821, art. 1, § 11; 1846, art. 3, § 8; 1894, art. 3, § 8.

hensive law on the subject. Pennsylvania, in addition to a constitutional restriction, has a statute which prohibits officers of the United States from acting as judges, inspectors, or clerks of state elections. The constitution of this state was formed in 1777, and although no statute has been passed on this subject, yet, by a concurrent resolution, of March, 1790, it was resolved, as the sense of the legislature 'that it is incompatible (according to the constitution of this state and of the United States) that a member of Congress, or other person holding any office under the United States, should be a member of the Senate or Assembly of this state, during his continuance in Congress or in such office; and that whenever a member of this legislature shall be elected or appointed a member of Congress, or to any office whatever under the United States, and shall accept of such office or appointment, it is hereby further resolved, that his seat in the legislature ought to be vacated.' Even in the government of Great Britain, officers of the excise and customs, and clerks or deputies in the treasury, navy, victualing and admiralty offices, and a long list of other dependents on the crown, are interdicted from being elected, or sitting as members of the house of commons.

Every officer of the United States, is in a state of partial disfranchisement. He cannot sit in congress, in the state legislatures, or in the electoral colleges. In the view of the constitution, he is an object of jealousy; he can, however, at any time, be restored to all the franchises of a citizen, by abdicating his office. Our government is founded on the representative system. It protects the purity and independence of the representative; it erects a barrier against the inroads of Executive patronage, and it intends that the constituent body should be free from the operation of the same influence.

In reserving to the national officers the elective franchise, it was undoubtedly contemplated, that it should be exercised in the genuine spirit of republicanism; that the suf-

frages of the citizen should not be biased by the emoluments and honors of the officer, and that he should not carry into the elections, any of the influence derived from his official position; and I trust that it will be universally admitted, that the national government ought not to confer or withhold offices, with a view of creating influence in state politics. It is well known that in this state, the national administration has for some years selected, in almost every case of any importance, its officers in opposition to the state administration; and this undoubtedly operates as an encouragement to organized and disciplined hostility. It is a virtual instruction to its officers to oppose, and it is an invitation to all who are desirous of the patronage of the general government, to embark in the opposition. The interference of the officers of the general government in state politics in 1798, was, at that period, a subject of general and well founded complaint.

In the interval between my first election and entrance into office, I took the liberty of apprising Mr. Monroe, the President of the United States, of the obtrusive intermeddling of the officers of the general government in our state politics, and of my earnest hope that, under his administration, this system, so justly and so generally reprobated, would be no longer tolerated. In discharging this duty to the republic, I entertained every wish to promote the most amicable relations between the general and state administrations; and I can truly declare, that no act of hostility, has been, in any shape, manifested or encouraged on the part of the authorities of this state.

The documents which I have now the honor to transmit to you, do not extend beyond the last general election, and the agitations preceding and accompanying it. At the very period when the officers of the United States, who have behaved so reprehensively, ought to have conducted themselves with the greatest delicacy; when a legislature was to be chosen, that was to appoint the electors of President

and Vice-President, and when the second officer of the United States was a candidate for the office of Governor,* all the influence of their offices was put in requisition, and brought into activity. Although deprived of the right of being chosen, yet, if in the exercise of the right of choosing, they are permitted by the power of office to influence elections, what security have the people for a pure legislature, for an independent congress, or for an incorrupt college of electors? On this occasion, I take a pleasure in stating, that notwithstanding the practices complained of were marked with signal impropriety in the general operations of the navy yard in Kings County, yet I do not know of a single instance wherein a naval officer who distinguished himself during the late war, has conducted himself improperly. The officers of the army stationed in this state have furnished, generally speaking, no ground of complaint. And the custom house officers on the lakes, so far as I can learn, have behaved in an unexceptionable manner. In exercising the rights of suffrage, they have, I believe, generally abstained from bringing any official influence, in any shape, to bear upon the controversy.

The navy yard is situate in Brooklyn, Kings County, and contains about 40 acres. Large sums of money have been expended there, in building and repairing ships of war; and an extensive establishment is maintained in that place. The documents, herewith transmitted, will show, that under the principal direction of Mr. Decatur, the naval storekeeper, the blacksmiths, caulkers, carpenters, laborers, and other persons, in the public employ, at the navy yard, were brought up to vote; that he was assisted in his operations, by other officers of that establishment; and that improper attempts were made, in a variety of shapes, to operate on the electors. The whole presents a scene of undue influence, and extraneous intrusion, revolting to every friend of republican government. The papers marked from A to L

* Daniel D. Tompkins, Vice-President.

inclusive, establish the charge beyond the possibility of refutation; and the certificate marked M, from the first judge of the county of Kings, places the credibility of the witnesses beyond doubt.

The patronage of the custom house in New York is immense; there are no printed documents which disclose the number and compensation of the officers employed in that establishment, as the resolution of Congress, of 27th April, 1816, directing a compilation and printing of a register, once in every two years, of the officers of the United States, has not been complied with in respect to the subordinate officers of the customs of New York. I can therefore only state, as a matter of estimate, that the patronage of the establishment approximates 200,000 dollars annually. The surveyor of the port, Mr. Joseph G. Swift, has the immediate direction of the inspectors and other subordinate officers of the customs; and although he has not the power of displacement, yet they are in such a state of dependence, that their personal comfort must directly, and their official existence indirectly, depend on his volition. In order that there might be no doubt of his determination to interfere in the state election, he reported, as a member of a committee, to a public meeting in Kings County, the resolution marked N. When the situation, connections, education, and political principles, of this officer of the United States, are considered, there can be no doubt, but that he had previously ascertained the sense of his political superiors, and that he was instructed to act accordingly. In pursuance of this example, the two inspectors of the customs at Staten Island, interfered in the most improper manner, in the election. The papers marked O, P, Q, R, S, T, will establish this charge; and the certificate marked U, given by the first judge of Richmond county, goes to prove the unquestionable good character of the witnesses. The papers marked V and W will also show the conduct of some of the inspectors in the city of New York. In such an immense

population, it is difficult to trace the course of individuals particularly; but it is believed, that the few friendly officers of the customs, were intimidated into entire neutrality, and that the mass of the influence of that institution, was made to exhibit a hostile attitude to the state administration. The law regulating the compensation of the inspectors of the customs, authorizes the allowance of three dollars a day, for the days that they are actually employed. These documents prove that seven of those officers were employed in electioneering; and I presume it will not be denied, that each individual received three dollars a day, from the public treasury, when so engaged.

The resolution, marked W, V, of the citizens of Buffalo, complains of the undue interference of the officers of the general government, in that quarter. The chairman of that meeting, Mr. John E. Marshall, informs me, 'that this resolution was intended to be a censure upon the general political conduct of those persons residing in Niagara county, who are attached to the commission for establishing the boundary line between the United States and Canada. It is very notorious that those men, and all their dependents, have for two years, been actively and zealously engaged in opposition to the state administration. At the last spring election, they were peculiarly industrious, some of them frequently declaring, that they were determined to revolutionize the county and state. The direct compensation of these officers, amounts to nearly 12,000 dollars a year, and their expenses are believed to be very considerable.

The conduct of the judge of the United States, for the northern district of this state, is daily before the eyes of the legislature. The marshals have acted in coincidence with the general current of extraneous influence; and in their selections of deputies to take the census, they have, as far as I can learn, studiously excluded all those applicants, that were friendly to the state administration. The

conduct of Mr. Robert Tillotson, one of the district attornies, and nephew of the president of the United States, is glanced at in the paper marked X; and that of Mr. Jacob Sutherland, the other district attorney, and nephew of the secretary of the navy, is mentioned in the paper marked Y. It will give me pleasure to find, that there is error in some of these imputations; but of their officious and improper interference, generally speaking, there can be no doubt. There are three newspapers, employed by the government, for publishing the laws of the union, in this state; and these consisted of the Argus, National Advocate, and Ontario Messenger, until within a few weeks, when the business was taken from the last paper, and committed to the Times in Batavia, a gazette of recent date, and comparatively limited circulation, and hostile to the state administration.

There are, I believe, 674 postmasters in this state, and I should estimate the aggregate patronage of the department in the state at large, at 100,000 dollars annually. During the able and impartial administration of the predecessor of the present postmaster-general, these offices were conferred without any reference to state politics. Attempts have been made, at different times, to cause the removal of postmasters friendly to the state administration, and I am sorry to say, that in several instances, they have succeeded. The papers marked Z will exhibit the case of Mr. Hezekiah L. Granger, who, in the spring of 1819, was removed from the office of postmaster at Manlius. The papers marked AA are an expose of the removal of Alpheus Doty, from the postoffice in Sandy Hill. This removal, it appears, was effected through the instrumentality of Mr. Roger Skinner, who resided in the same village. Mr. Doty, who has since died, had incurred the resentment of Mr. Skinner, for his support of the state administration, and he was accordingly marked out for a victim; and in December, 1818, his removal was solicited by Mr. Skinner in the

city of Washington. To effect this purpose, it would appear that the good offices of Mr. Henry Meigs, were employed to operate on his uncle the postmaster-general. It appears that the postmaster-general, had determined to make the removal, on Mr. Skinner's representation alone. The petition was signed by violent partisans, and the reasons assigned in it were only ostensible; and there is this singular circumstance attending this transaction; the papers directing the displacement, were inclosed to Mr. Skinner, and it was not it appears, in his estimation, a sufficient punishment to effect the removal of a good citizen and faithful officer, under false pretences; but his humiliation must be witnessed by his political adversaries, who were apprised of the event, and were called in to exult over his fall. The papers marked BB will show the removal of the postmaster at Caldwell. This was also principally accomplished through the agency of Mr. Skinner and upon the same grounds of party excitement. His letter to the postmaster general, on this subject, could not be found. The paper marked CC refers to the removal of Mr. Brown, the postmaster at Hartford, in Washington county, which was also the result of the same spirit.

In March, 1819, Mr. Jacob Van Ness was removed from the office of clerk of the county of Dutchess; and Mr. Peter R. Livingston, a senator from the southern district, publicly declared, as I am credibly informed, that the then postmaster at Poughkeepsie, should be removed from office, and Mr. Van Ness appointed in his place. This event actually took place, and indicates an understanding and co-operation, between a department at least at Washington and a political party in this state.

Although these measures were unequivocal in demonstration, and reprehensible in character, yet they were not deemed sufficiently energetic for the crisis and accordingly, on the 4th April, 1820, 21 days before the general election, Mr. Martin Van Buren, chairman of a meeting which nomi-

nated Mr. Tompkins for Governor, addressed the following letter to Mr. Henry Meigs, the nephew before alluded to, of the postmaster general.

'MY DEAR SIR.—Our sufferings, owing to the rascality of deputy postmasters, is intolerable, and cries aloud for relief. We find it absolutely impossible to penetrate the interior with our papers, and unless we can attain them by two or three prompt removals, there is no limiting the injurious consequences that may result from it; let me therefore entreat the postmaster-general to do an act of justice, and render us a partial service, by the removal of Holt of Herkimer, and the appointment of Jabez Fox, Esq. Also of Howell of Bath, and the appointment of an excellent friend, W. B. Rochester, Esq. a young man of the first respectability and worth in the state; and the removal of Smith, at Little Falls, and the appointment of Hollister; and the removal of Chamberlain in Oxford, and the appointment of Lot Clark, Esq. I am in extreme haste, and can therefore add no more. Use the enclosed papers according to your discretion, if any thing is done, let it be quickly done, and you may rely upon it, much good will result from it.'

Yours affectionately,

M. VAN BUREN.

April 4, 1820.

The Hon. HENRY MEIGS.

The ostensible object of this letter is the displacement of certain postmasters, on account of alleged malpractices, but the real design was to subserve the purposes of party. The removal of a few distinguished postmasters, would serve as a monition to the 674 postmasters in the state, to come out as electioneering partisans against the state administration, or to maintain silence. The improper and corrupt practices imputed to postmasters by Mr. Van Buren, are no doubt entirely unfounded. The private char-

acters of those gentlemen are perfectly respectable, and their official conduct had never, as I understand, been impeached before that period. 'If anything is done, let it be quickly done, and you may rely upon it, much good will result from it.' That is, let it be done before the election, and many votes will be acquired.

The letter of Mr. Van Buren, produced the removal of Messrs. Chamberlain and Smith, two of the postmasters mentioned in it. It seems that Mr. J. R. Drake, then a member of congress, interfered very officiously against a postmaster living out of his district; and it is believed that the removal of Mr. Leonard, whose case will be hereafter mentioned, was accomplished through his instrumentality. It appears that Mr. Drake, cultivated an influence, when in Washington, sufficient not only to injure men much more respectable than himself, but to secure a contract with the government, which he considered of some consequence. Mr. Howell was kept in his office by a personal acquaintance with Dr. Bradley of the general postoffice, who very properly exerted himself to continue the services of this excellent officer, for the benefit of the department. Mr. Holt was not removed until the 7th of December last, after the resolutions of a party meeting, marked EE, held on the 30th of October last, were forwarded to the postmaster-general. It is said by the postmaster-general, that Mr. Holt was considerably delinquent, and failed for a number of quarters, to render his accounts according to law. In order to establish the reality of this reason, the application of removal ought to exist in every similar case; but an intimation has been publicly and repeatedly made of a great delinquency, and no notice has been taken of it; and I am greatly mistaken, if many cases do not exist, where the returns required by law, have not been duly made, and which have, notwithstanding, been passed over without animadversion.

The papers marked DD, probably contain the true state-

ment of this case. The papers marked GG, relate to the removal of the postmaster at the Little Falls, and the affidavits of the honorable Robert Monell and Joseph S. Lyman, marked FF, will illustrate the general character of these transactions.

On the 15th of April, 1820, Mr. Stephen B. Leonard, was removed from the office of postmaster at Owego. The letter announcing this, is in the words following, to wit:

'POST OFFICE DEPARTMENT, 15*th April*, 1820.

SIR.—Your being a mail contractor, and the only printer in the place where you reside, it is considered that your holding the office of postmaster, gives you an undue preference over other citizens and printers, not justified by the usual practice of this department. With your conduct, as postmaster, I am well satisfied.

Respectfully yours, &c.

R. J. MEIGS, JR.

STEPHEN B. LEONARD, Esq.

The report of the postmaster-general, marked HH, made at the present session of Congress, shows that there are 58 postmasters, who are at the same time, contractors for carrying the mail. And it is well known, that in three important cities, the postmasters are, at the same time, proprietors and editors of newspapers, and it cannot be presumed that the circumstance of Mr. Leonard's being the only printer in Owego, would increase the force of the general objection. In this case, there would be no immediate rival establishment which he would be interested in injuring by virtue of his official situation. The case of Mr. Leonard is particularly mentioned in the paper, marked II. The documents, marked JJ, KK, LL, MM, and NN, are corroborative of the other proofs, and exhibit some interesting views of this subject.

There are, in all probability, scenes of equal if not greater turpitude, which cannot be exposed on account of the pecu-

liar situation of individuals, dependent for their livelihood, in maintaining silence, interested in concealing abuses, desirous of securing personal or political friends, averse to encounter the vituperation which will ensue, apprehensive of personal injury from the desperation of detected malefactors, or looking to a particular quarter for favors to themselves or connections. Under these circumstances, it would be impossible for any department of the government, even if armed with the power of compelling testimony, to attain a full knowledge of the abuses complained of. In the present case, it was rendered still more difficult from the want of official authority to take cognizance of the investigation; and when it was instituted with a view to the obtainment of documentary testimony, the offenders were forewarned, and had ample time to take measures for the suppression of the truth.

It is, I conceive, impossible to resist the unfavorable conclusions which must be drawn from the body of testimony now submitted to you; making full allowances for exaggeration or error, for the influence of prejudice, and the operation of improper motives, and admitting that a considerable portion of the allegations may be successfully refuted, yet still there will remain a sufficient number of strong and established facts, to prove a concert of exertions on the part of the officers of the national government, in the navy yard, the custom house, the general post office, and in the judicial and some other institutions of that government, operating in our local elections; and which demonstrate the existence of an organized and disciplined corps, and the obtrusion of extraneous influence, for the purpose of promoting the aspirations of ambition, of securing the possession of authority, or of breaking down the power of the state, by the encouragement of intestine divisions. And this is a case, in which the maxim — He orders the commission of a crime who does not forbid it, when it is in his power, may be justly and emphatically applied. The least

intimation from the proper quarter, would have effectually prevented these notorious and alarming evils.

To all sincere friends of republican government, and such, gentlemen, I believe you all to be, this statement must present subjects for serious reflection.

Without the existence of state governments, it is impossible for us to enjoy the blessings of free government; and without a national government, we would be involved in wars at home, and have but feeble security against attacks from abroad. Both are essential to the freedom, the safety, the prosperity, and the honor of our country. The national government is, from the necessity of the case, armed with controlling authority over the revenues and the physical force of the country. In its military and naval establishments, in the arrangement of the national domains, in the disposition of its diplomatic intercourse, in the collection of taxes, in the immense patronage which it derives from the numerous and lucrative offices in its gift, and in the allurements which are consequently held forth to ambition and cupidity, we perceive the foundation of an influence, which may be arrayed, with a force almost irresistable, against the independence and stability of the state governments. It may be truly observed, that in proportion to the population of the United States, no government has more numerous and efficient means of directing and controlling public opinion. And when we consider, that few of the states have any funds, or resources, except what are derived from taxation; that the compensation of their officers are comparatively small; and that the heads of their executive and judicial departments, have been even sometimes induced to accept offices under the national government, subordinate in importance, but superior in emoluments, we must at once perceive the difficulties which the state authorities might have, in opposing the improper influence of the national government. And when we further consider, that in all probability there would be no unity of

views, nor coincidence of exertions, operating at the same time, in the states, while the national authority might make its approaches, by singling out particular states, and advancing against them, with its combined and consolidated force; we have every reason to exercise the utmost vigilance, and to interpose all proper barriers against undue encroachments. A government of influence and corruption is the worst possible shape which a republican government can assume, because, under the forms of freedom, it combines the essence of tyranny; and altho' I am far from saying that this is now the case, yet the first attempts to give a wrong direction to the authority of government, ought to be resisted. Slavery is ever preceded by sleep; and the liberties of free states are more frequently prostrated by fraud than by force. In the intelligence and patriotism of the body of our fellow citizens, we may, I trust, rely for the preservation of our free governments, and with an anxious desire to merit their good opinion, by a faithful and independent discharge of my important duties, and with an entire disregard of any hostility which may arise from any quarter, in consequence of my pursuing this course, I submit this communication to the representatives of the people, fully persuaded, that when the personal animosities, and political agitations of the times, are buried in oblivion, I shall be considered, by impartial posterity, as having endeavored to deserve well of the republic, by my conduct on this occasion. [See note 4.]

De WITT CLINTON."

Albany, 17 January, 1821.

The papers referred to in this message are printed at length in the Assembly Journal.

January 19. To the Assembly: Transmitting a resolution adopted by the Legislature of Vermont declaring it inexpedient to concur in the Pennsylvania proposition to limit the power of Congress as to banks.

January 22. To the Assembly: Transmitting a resolution adopted by the Legislature of New Hampshire, declaring it inexpedient to concur in the Pennsylvania proposition to limit the power of Congress as to banks.

January 24. To the Assembly: Transmitting a communication from the commissary general relative to a lease of an unoccupied part of the arsenal lot in Albany, and suggesting legislation as to subsequent leases.[12]

February 1. To the Assembly: Transmitting the annual report of the trustees of the Sailors' Snug Harbor.

February 5. To the Assembly: Transmitting a communication from certain Indians living at New Stockbridge, relative to squatters on Indian lands, and the disposal of lands held by individual Indians.[13]

February 7. To the Assembly:

"GENTLEMEN.—With this message, you will receive a communication from Red Jacket, in behalf of several of the Seneca Chiefs, addressed to me through Capt. Parish, an Indian interpreter.

The interests of the Oneida, Brothertown, and Stockbridge Indians, are committed to the care and protection of an attorney, appointed for that purpose. The district attorney, for the county in which the St. Regis Indians reside, has a similar charge, with respect to them; and an agent is assigned to guard the rights of the Onondagas. Some provision, of a like nature, with respect to the Senecas, might

[12] By chap. 111, passed March 16, 1821, the commissary-general, with the Governor's approval, was authorized to lease the unoccupied portion of the Albany arsenal lot for a term not exceeding ten years, reserving to the State the right to cancel the lease on notice, whenever the property might be needed for public purposes.

[13] Chap. 204, passed March 31, prohibited intrusions on Indian lands, declared void any contract by an Indian relating to Indian land except with another Indian, and provided for the summary removal of intruders. The same act required the district attorney to sue for penalties for intrusions on Indian land in his county. This act was sustained in New York ex rel. Cutler v. Dibble (1858), 21 How. 366, aff'g 16 N. Y. 203.

have a beneficial effect, in protecting them against intrusions and depredations. [See note 13.]

De WITT CLINTON."

Albany, 6 Feb. 1821.

Red Jacket's communication, which appears in full in the Assembly journal, referred to numerous acts of oppression perpetrated by the whites against the Indians for which redress was sought through the interposition of the Governor and legislature. Red Jacket quoted circumstances which he said showed that "the chain of friendship between us and the white people, is wearing out, and wants brightening."

February 10. To the Assembly: Transmitting a report by the Ohio legislature relative to proceedings in the federal circuit court by the Bank of the United States against the State Auditor of Ohio and others, involving the power of the state to impose and collect a tax on the business of the bank transacted within the state, or on its capital used therein. The report contained a history of the controversy, and concluded by presenting the following resolutions which were adopted:

"*Resolved,* by the General Assembly of the State of Ohio, That in respect to the powers of the governments of the several states, that compose the American union, and the powers of the federal government, this general assembly do recognize, and approve the doctrines asserted by the legislatures of Kentucky and Virginia, in their resolutions of November and December, 1798, and January, 1800, and do consider that their principles have been recognized and adopted, by a majority of the American people.

Resolved further, That this General Assembly do protest against the doctrines of the federal circuit court, sitting in this state, avowed and maintained in their proceedings against the officers of state upon account of their official acts, as being in direct violation of the 11th amendment to the constitution of the United States.

Resolved further, That this General Assembly do assert, and will maintain, by all legal and constitutional means,

the right of the states to tax the business and property, of any private corporation of trade, incorporated by the congress of the United States, and located to transact its corporate business within any state.

Resolved further, That the bank of the United States, is a private corporation of trade, the capital and business of which, may be legally taxed in any state where they may be found.

Resolved further, That this General Assembly do protest against the doctrine, that the political rights of the separate states, that compose the American union, and their powers as sovereign states, may be settled and determined in the supreme court of the United States, so as to conclude and bind them, in cases contrived between individuals, and where they are no one of them parties direct.

Resolved further, That the Governor transmit the governors of the several states, a copy of the foregoing report and resolutions, to be laid before their respective legislatures, with a request from this General Assembly, that the legislature of each state may express their opinion upon the matters therein contained.

Resolved further, That the Governor transmit a copy of the foregoing report and resolutions, to the President of the United States, and to the President of the Senate, and Speaker of the House of Representatives of the United States, to be laid before their respective houses, that the principles upon which this state has, and does proceed, may be fairly and distinctly understood."

February 12. To the Assembly: Transmitting the annual report of the commissary general.

February 16. To the Assembly: Transmitting the annual report of the inspector general of staves and heading.

February 20. To the Assembly: Transmitting the annual report of the inspector of flour for the city of New York.

February 24. To the Assembly: Transmitting a statement and estimate by the commissary general relative to his department.[14]

[14] The appropriation act, chap. 250, made provision for certain expenses in the commissary-general's department.

February 27. To the Assembly:

"Gentlemen.— At the request of a town meeting of the citizens of Queensbury, in Warren county, I transmit to you, a representation made by them, respecting quit rents; and I respectfully recommend this important subject to your deliberate attention and favorable consideration.[15]

De WITT CLINTON."

Albany, 27 Feb. 1821.

The representation consisted of a resolution adopted at a special town meeting held on the 17th of February, 1821, in substance reciting that the charter of the town had been granted by the Crown of Great Britain, reserving quit rents which were still attached to a large portion of the land in the town, and the town meeting requested the legislature to provide by law for the abolition and remission of the quit rents. [See note 15.]

February 28. To the Assembly: Transmitting a report adopted by the Legislature of Maryland, relative to the appropriation of public lands for educational purposes, concluding with resolutions declaring that "each of the United States has an equal right to participate in the benefit of the public lands, the property of the Union," and that "the states in whose favor Congress have not made appropriations of land for the purposes of education, are entitled to such appropriations as will correspond, in a just proportion, with those heretofore made in favor of the other states."[16]

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[15] By chap. 241, passed April 3, owners of land charged with quit rents might commute for the same within two years, at a specified rate, and on paying the amount into the State treasury, such lands were to be discharged from further quit rents.

[16] The Assembly committee on colleges, academies and common schools, of which Gulian C. Verplanck was chairman, presented a report on the 30th of March, containing an interesting historical sketch of the origin and development of the national policy in relation to public and unappropriated lands. It was stated that the lands which might be affected by the Maryland plan

March 12. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

March 15. To the Assembly:

"GENTLEMEN.—By an act, passed 18th March, 1791, a certain tract of land, was vested in trustees for the benefit of Peter Otsequette, an Oneida Indian; and by an act of the 29th of February, 1820, Anthony Otsequette, the representative of a moiety of the said interest, was authorized to dispose of it to the state; those entitled to the other moiety, are now desirous of disposing of the same; and as legislative provision will be necessary, I recommend this subject to your favorable notice.[17]

DE WITT CLINTON."

Albany, 14th March, 1821.

March 21. In response to an assembly resolution requesting information concerning the negotiations for a settlement of the state's claims against the United States growing out of the late war, the Governor transmitted (1) a communication from Ferris Pell, the State's agent, giving a brief history of the negotiations, and the condition at that time from which it appeared that negotiations were

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amounted to 9,370,760 acres, of which New York would receive about one-tenth if the plan should be adopted. This would have given New York 937,076 acres. This estimate is particularly interesting in view of the act of Congress of 1862, distributing public lands among the states for the purpose of establishing agricultural colleges, on which distribution New York received 990,000 acres, which became the foundation on which Cornell University was established.

The Assembly committee in the report already cited, pointed out that by congressional legislation beginning as early as 1785, one lot, 640 acres, in each township thereafter erected was to be set apart for public schools. The committee thought this policy was wise, especially as it ensured an ample fund in each township for the maintenance of education in the new states. Summing up the whole matter the committee concluded that it was not advisable for New York to co-operate in urging the adoption of the Maryland plan.

[17] The suggested relief to the heirs of Peter Otsequette was granted by chap. 118, passed March 19.

practically concluded, and that a final report might soon be expected; (2) correspondence between Mr. Pell and John C. Calhoun, Secretary of War, relative to the purchase by the United States of the fortifications on Staten Island, at the Narrows, from which it appeared that the board of engineers had reported that such fortifications were indispensable to their plan for the defence of New York harbor. Secretary Calhoun's letter contains a quotation from the Engineer's report, showing the location and plan of construction of Fort Tompkins.

March 21. To the Assembly: Transmitting the annual report of the Adjutant General.

March 24. To the Assembly:

Objections by the Council of Revision to a bill "authorizing the building of a toll bridge across the Esopus Creek in the town of Saugerties in the county of Ulster, and for other purposes."

"1st. Because, the bill suspends, for a limited time, the rights, privileges and franchises heretofore granted by the legislature, and by the act, entitled 'an act to incorporate the Ulster and Delaware first branch turnpike company,' passed March 9, 1810, and authorizes the commissioners of highways to direct the turnpike road, established by the said act, to be worked as a common highway, and erects a corporation to build a bridge across the Esopus Creek, at the place where the bridge, was built by the president and directors of the said turnpike company, allowing them, at any time within five years, to resume the turnpike, on making payment for all improvements that shall have been made. If the legislature rightfully possess the power of making the grant in question, it ought not to be exercised until the parties to be affected by the bill have an opportunity to contest the facts alleged if they deem it expedient. The preamble states that it is represented to

the Legislature that the said president, directors and company, have become insolvent; that the road and bridge are in a ruinous state, and that the company refuse to make repairs; but for aught it appears, this representation is altogether *ex parte*, and made without the knowledge of the corporation whose rights are suspended; this, of itself, presents a well founded objection against the passage of the bill.

2d. Because the right to dissolve the corporation, does not appertain to the legislature, unless power for that purpose be reserved in the act of incorporation. The charter grants rights, privileges and franchises to individuals. It is admitted that there is a tacit or implied condition annexed to the grant, which, if broken, may create a forfeiture by reason of negligence, or abuse of the powers granted; for this there is an adequate remedy by an information, in the nature of a writ of *quo warranto*, in which the question of forfeiture may be tried, and if found against the corporation, its franchises may be resumed by the State. This proceeding is according to the course of the common law and is sanctioned, as well by the principles as the uniform practice of our government. It is believed that the power assumed in the bill has been exercised by the judicial authority exclusively, since the establishment of the constitution. The common law which we adopted points out the remedy; and it cannot be doubted, that a departure from this salutary rule, would be in derogation of private rights, and not within the legitimate powers of the legislature."[c]

The bill was not passed over the veto.

March 26. To the Assembly: Transmitting resolutions adopted by the Legislature of Illinois approving the Pennsylvania proposition to limit the power of Congress as to the incorporation of banks; approving an amendment proposed by Vermont providing for the election by single dis-

[c] U. S. Const. art. 1, § 10, clause 1.

tricts of representatives in Congress and Presidential electors except the two additional electors, who were to be chosen in such manner as the Legislature might direct; and disapproving the Kentucky proposition that a change in the compensation of representatives in Congress should not take effect during the term for which they were chosen.

April 2. To the Senate:

Objections by the Council of Revision to a bill "to amend an act to perpetuate the testimony of witnesses in certain cases, passed April 5, 1813."

"1st. Because by the first section of the bill, the provisions of the 'act to perpetuate the testimony of witnesses, in certain cases,' are extended to all personal actions, now pending, or which may hereafter be pending, in any court having cognizance thereof, within this state, subject nevertheless, to all the limitations and provisions in that act contained.

In order to understand the operation of this bill, it is necessary to examine the provisions in the act referred to. By one of them it is declared that any person may make an affidavit before a judge of the supreme court, or before a judge of a court of common pleas, being of the degree of counsel, or before a master in chancery, that he is a party in a suit then pending, or expected to be commenced, affecting the title to land, and that the testimony of a witness to be named, is material and necessary to him, in such suit; and the officer shall, thereupon, direct reasonable notice, not less than fourteen days, to be given to the opposite party, of the time and place of examination of such witness; and the judge or master shall proceed at the time appointed, on due proof of the service of the notice, to take the deposition of the witness, and he shall include, in such deposition, any answer or declaration of the witness, which shall be required to be included by either of the parties;

the deposition is then to be filed, and to be used upon trial in the cases therein specified, subject to objections to the competency of the witness, or to the testimony.

This provision in the act of 1813, was confined to the single case of title to land, and there appears to be greater reason for the provision in that case, and much less danger of abuse, than in the application of it to all personal actions. The provision is, at best, very loose and unchecked, and the Council apprehend, that if it be extended to all cases whatsoever, it may produce great injustice to suitors, and lead to the corruption and abuse of testimony.

In the first place, it may take the opposite party entirely by surprise, and without any sufficient information to enable him to cross examine the witness: a cause is pending in court after the return of the writ, and before any declaration is filed; the process does not ordinarily state the cause of action, and the application to examine witnesses may be made before the cause of action is disclosed to the opposite party; the affidavit, to be made before the judge or master, is not required to disclose it, and the opposite party may be hastily summoned from one end of this extensive state to the other, on a notice of fourteen days, to cross examine a witness, before he has been informed of the particular cause of action against him. If he obeys the summons, he goes in ignorance of the nature of the case, and if he omits to attend, he suffers witness to say what he pleases, without any call for explanation.

2d. Nor is there any check provided by the bill, against taking the most improper testimony. The officer, before whom the deposition is to be taken, has no discretion to judge of the fitness of the questions put to the witness. He is even specially required to include in the deposition any answer or declaration of the witness, which either party may require to be inserted. By this means, gross scandalous matter, altogether impertinent, and having no proper relation to the merits of the case, may be inserted and per-

petuated upon record. This latitude of examination is the more liable to abuse, when it is applied to that class of personal actions which are founded in tort, and in which the angry passions are apt to be engaged.

3d. Another objection to the bill is, that the party applying to examine a witness, is not required to show the reason or necessity for such a premature examination. He may require any witness, in any case to be examined immediately on the first pendency of the suit, without stating that he is old and infirm, or sick, or not likely to live, or about to leave the state. He is only to declare that the testimony of such a witness is material and necessary, in the defence or prosecution of his suit, and he then will be entitled to examine any witness he pleases, and call out all the testimony in any case, long before the trial, without showing any existing necessity for such a disclosure. It is a very dangerous anticipation of the regular trial of a cause, in the presence of the court and the jury, and may be productive of fraud and perjury, by affording an opportunity to tamper with witnesses, and by creating inducements fraudulently to counteract, and unduly to supply the deficiency of proof.

This mode of taking testimony by depositions, prior to any pleadings in the cause, tends greatly to impair the integrity of testimony, and to undermine the safety and value of trial by jury. It can never be justified, except upon the principle of extreme necessity and no such necessity is required to be shown in this case; and this the Council apprehend to be a most serious objection to the bill.

It is in direct hostility to the common law policy of *ore tenus* examination in the presence of the court and jury, and if a witness, thus prematurely and privately examined, should afterwards attend the trial, his previous deposition would operate as a restraint upon sifting inquiries at the bar, and greatly check the investigation of truth. If a free and open inquiry should not be desirable to the witness, or

either party, nothing could be more easily managed than for the witness to be out of the state, at the trial, and thereby give admission to his affidavit.

The necessity of such a material innovation upon the old and settled principles of our law, does not appear by the bill, and has not occurred within the knowledge or experience of the Council; and innovations upon the old and established principles of law, ought never to be made for the sake of theoretical improvement, but ought always to be preceded by inconveniences or evils, actually experienced. As the law now stands, testimony can be very conveniently perpetuated, provided the necessity for it be first made to appear, and it must then be taken under those checks and safeguards which justice dictates. Testimony may be perpetuated by a bill in chancery, but in such case, the bill must state that the party is in danger of losing the testimony, by delay, or that his right rests entirely upon the evidence of the witness sought to be examined. The bill must likewise particularly describe the nature of the right or demand to which the testimony is to be applied, so that the opposite party may know to what subject to point his inquiries. The courts of law will also allow testimony to be taken *de bene esse*, in any cause pending before them, but no order would be obtained for such a premature examination, unless it was first shown to the satisfaction of the judge or commissioner, that there was a necessity for it, by reason that the witness was old and infirm, or in danger of life, or about to depart the state, and the judge would no doubt exercise a sound discretion in respect to the previous disclosure of the nature of the action or defence, and the fitness and pertinency of the proof. Under the present bill, a party may apply to a master in chancery, who has no judicial authority, and without showing any necessity, and without disclosing his case, may have any witness examined on any subject, and may require anything he says, to be taken down. The bill

seems, therefore, to be destitute of all reasonable and customary checks against surprise and imposition, and may prove extremely injurious to the pure and correct administration of justice."

The bill was not passed over the veto.

April 3. The Legislature adjourned without day.

1822. JANUARY. LEGISLATURE, FORTY-FIFTH SESSION.

DE WITT CLINTON, Governor.

The Legislature met the 1st day of January, but a quorum did not appear until the next day, at which time the Governor delivered the following

OPENING SPEECH.

Gentlemen of the Senate and of the Assembly.—Since the adjournment of the legislature, an event has occurred of the highest importance to the people of this state: The delegates elected "for the purpose of considering the constitution of this state, and making such alterations in the same as they may deem proper, and to provide the manner of making future amendments thereto," have concluded their deliberations, and presented the result for the ratification or rejection of the people, in the shape of a new constitution, varying essentially in many of its provisions from the present frame of government. As this subject is now under the consideration of the supreme and sovereign power of the community, the source of all legitimate government, it would be obviously improper for the derivative and subordinate authorities to interfere in their official characters with its deliberations and decisions. Whatever advice we offer, whatever determination we form, and whatever course we pursue, must be indicated in our individual capacities, as component members of a great com-

munity acting in its sovereign character: and whenever the momentous decision is made, and whatever it may be, it will be our incumbent duty to obey implicitly the determinations of the people, and to carry into full effect their expressed volitions. Were it not for considerations so imperative I should on this, as I trust I have on all proper occasions, have communicated with frankness and candor my views in relation to the bearing of this important question on the public welfare. It is a spectacle truly felicitating, to observe the calm and dignified moderation with which our constituents have approached this important subject, for so far as my observation has extended, the discussions have been free from the usual asperities and agitations of the times. It is indeed not a question involving the views of personal ambition, the interests of party ascendency, or the feelings of local contention. It looks to the past for enlightened instruction, to the present for wise and patriotic decision, and to the future for general and permanent benefit. To perceive a vast and growing population sitting in judgment on its own form of government, acting with intelligence, independence and firmness, discarding minor and evanescent considerations, and consulting the greatest happiness of the greatest number, is a sublime sight, administering to the best hopes and answering the highest expectations of the friends of republican government. And let us humbly supplicate the Supreme Dispenser of all good to shed his propitious influence on this occasion, and to produce a result auspicious to the stability of civil liberty, the ascendency of good government, and the prosperity of our beloved country. In all the vicissitudes of an eventful existence, in the first migrations and settlements of our forefathers, in the trials of colonial dependence, in the struggles of a glorious revolution, in the establishment of free and energetic governments, and in rapid and wide-spreading advances to prosperity, it has pleased Almighty God to consider us with

an eye of paternal indulgence, to watch over us with his providence, and to protect us against those overwhelming evils which have been so fatal to the best interests of the human race; and may we not humbly hope that the same gracious dispensations will attend our future progress, and that we may be permitted to exhibit an irrefragable proof and an illustrious example of the capacity of man for self government, and of his triumphant advances in all that can add dignity to his character and derive blessings from his exertions.

The labors of agriculture have for the last season been crowned with abundance, and the institutions which have been founded for the encouragement of this important pursuit, continue to produce the most beneficial effects. A great amelioration within a few years is observable within all the departments of rural economy. The rapid improvement of live stock, the judicious application of manures, the increased production of the various kinds of grain, and other vegetables, the introduction of new objects of cultivation, the invention and adoption of excellent implements of husbandry, and a growing attention to the promotion of horticulture, have unquestionably originated in a great degree from institutions which concentrate the fruits of experience, which apply the discoveries of science and the inventions of art, and which excite into activity all the generous principles of emulation, and all the latent powers of improvement.[1]

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[1] The agriculture law of 1819 was amended by chap. 236, passed April 16, by authorizing boards of supervisors to raise by taxation an amount equal to the amount apportioned to the county under the original act, and to expend the amount so raised by tax, and the amount received from the state as the board might deem best for the promotion of agriculture and of family domestic manufactures.

A clause in the general appropriation act, chap. 260, passed April 17, authorized the payment of a specified amount to the counties of Oneida, Onondaga and Oswego.

The great and sudden augmentation of the price of our principal commodity, in consequence of an anticipated relaxation of the corn laws of Great Britain, and its subsequent declension on the receipt of unfavorable intelligence, are calculated to make a deep and serious impression on the public mind, and to point to the sources of evils which it may be in our power to obviate. The excess of the products of the soil beyond the consumption of the agricultural interest, must either find a sale in the home and foreign markets, or be lost to the proprietors. To rely upon foreign markets, is to expose ourselves to the caprice of foreign policy, and to commit primary interests to the guardianship of rival nations. We must, therefore, consult the substantial and permanent prosperity of agriculture, by providing for the domestic consumption of its production; and this can only be accomplished by the dense population of manufacturing towns and commercial cities. And it is indeed highly satisfactory to witness the growing prosperity of the manufacturing interest, after the blow which it received on the termination of the late war. In its fabrics, its consumptions, and all its operations, it stimulates agricultural industry by purchasing its productions and administering to its accommodations; and as the superabundance of the products of agriculture, and manufactures, must create the materials for foreign commerce, it is obvious that all these great departments of human industry are dependent on each other, and are closely connected in promoting the general prosperity. A nation purely agricultural which derives the fabrics of art from foreign supplies will almost always be poor. Commerce in order to be beneficial, ought to export more than it imports. And the general state of our country emphatically inculcates the necessity of intrenching ourselves in our own resources, of cultivating the creative powers of domestic industry, and of banishing those excesses of luxury and extravagance which are the bane of individual happiness

and republican virtue. In the excess of our imports above our exports, the prodigal consumption of foreign commodities, the unfavorable rate of exchange, and the exhausting exportation of metallic money, we perceive the sources and the signs of individual distress, and national debility. And the course of this commerce, which is recommended, not by the wealth it produces for the people, but by the revenue it creates for the government, must eventually be arrested by the poverty and misery which it will generate. There is no truth more evident than that our importations must be finally governed by our exportations, for if we consume more than we create, if we buy more than we sell, we must sooner or later encounter a crisis when our credit and our resources will be exhausted. The necessity of encouraging the home market will be more manifest when we consider that our principal commodities are excluded from foreign countries. Flax seed[2] and pot and pearl ashes are indeed admitted into Great Britain, but the West India Islands are closed against us and in the loss of a valuable market for our live stock, lumber and grain, we experience no inconsiderable injury. Relying upon the wisdom and public spirit of the national authorities to devise and apply efficacious remedies for these evils, either by amicable arrangements or counteracting restrictions, let us attend to those duties which the importance of the occasion and the severity of the pressure imperiously demand from our hands.

Under this impression it is gratifying to perceive the enterprising spirit of our agriculturists seeking various sources of emolument, directing itself to new objects, and extending its operations over a greater area. When our manufactures were, in a great measure prostrated, the price of wool underwent a corresponding depression; but

[2] Chap. 157, passed April 5, created the office of inspector of flax seed and prescribed regulations for its inspection and exportation.

there is now every reasonable encouragement for the raising of sheep, and all that branch of rural economy, which embraces grazing and live stock in general, has been a lucrative occupation. Our husbandmen have also turned their attention to the cultivation of hemp and flax, and a machine which has lately been invented for the dressing of these articles, will, in all probability, form a new era in our agriculture. It is estimated that one machine can prepare a ton in a day, at the cost of two cents a pound, thereby surmounting every objection that has been made against this kind of husbandry, and supplying the raw materials of several invaluable manufactures, with a facility equal in importance and similar in character to that which has been so successfully experienced in the cotton of the south. The iron ore of all descriptions which is found in many parts of the state, inexhaustible in quantity and unsurpassed in quality, has lately attracted pointed attention, and will enable us in a short time to dispense with importations. Salt, manufactured in the vicinity of the ocean, or from those inexhaustible depositories which nature has provided in the interior of the country, can be procured without resorting to foreign supplies.

Various manufactures, entitled to every encouragement, are rising into notice and usefulness; and I might particularly indicate a valuable establishment in the city of New York, which, with the adoption of an ingenious invention, is enabled to work up great quantities of wool and cotton; to employ several hundred persons, and to save several hundred thousand dollars to the country. A powerful and general impulse has been given to the fabrication of cotton cloths, thereby rendering us, to a considerable extent, independent of extraneous supplies, and establishing, upon a firm foundation, a valuable and increasing market for the most important production of our southern brethren. And when we extend our view to these great federal republics which are rising up in the southern section of America,

breaking the chains of colonial dependence and commercial monopoly, asserting the rights and vindicating the dignity of human nature, with glorious and triumphant success; and when we contemplate the commercial relations which will grow out of these momentous changes, and the close alliance of interest and intimacy of communication which must necessarily arise from facility of intercourse, from proximity of territory, from reciprocal wants, and from republican sympathies, we must be encouraged in our career of productive industry, under a full persuasion that it will find an ample remuneration for its exertions in the extension of its accommodations to the most opulent regions of the globe.

I trust that I shall not be considered as entering too much into detail, when I call your attention to the law providing for the inspection of pot and pearl ashes, which articles constitute at present our principal export.[3] It often, as is stated to me, amounts annually to 30,000 barrels, exclusive of 18,000 which pass into Canada. This commodity, inspected under the laws of Massachusetts, has brought five pounds sterling more a ton, than ours, in foreign markets; and this is believed to arise, not from a superiority of inspection, but from a superiority of the barrel in which the article is contained. Our law allows an incompetent sum to the inspector for a new barrel in case the package is bad; the consequence is, that barrels which ought not to be exported, are repaired for the purpose, and the article sustains such injury in the transportation, that its character is depressed in foreign markets.

Permit me once more to call your attention to a subject which deeply involves the prosperity of our manufactures and the general accommodation of the community. The opulence of Great Britain is to be ascribed, in a great de-

[3] A new act, chap. 164, regulating the inspection of pot and pearl ashes, was passed on the 5th of April, repealing former inspection laws on the same subject.

gree, to her manufacturing pursuits, which could not be carried on, without the coal that abounds in that country. Our forests are falling rapidly before the progress of settlement, and a scarcity of wood for fuel, ship and house building, and other useful purposes, is already felt in the increasing prices of that indispensable article. No system of plantation for the production of trees, and no system of economy for their preservation has been adopted, and probably none will be, until severe privations are experienced. In some parts of Long Island, and in the vicinity of the great canal, in several of the western counties, extensive beds of turf or peat have been found, and have been resorted to for domestic accommodation. But coal is of primary importance in many of our most important manufactures: and the discovery of a sufficient quantity, within a reasonable distance of any of our navigable waters, would be more efficacious in quickening the operations of creative industry, administering to the comforts of life, and promoting the substantial wealth of the country, than the most productive mines of the precious metals. The geological conformation of the west clearly demonstrates the presence of this fossil, and I am confident that liberal encouragement on the part of the state would produce the effectual accomplishment of our most sanguine anticipations.

It is an unquestionable truth that all the great interests of society must rely for their support and encouragement on the flourishing condition of internal trade, which can never exist without facility of communication. And under this impression we cannot too highly appreciate the importance of the artificial navigation now in a train of rapid and successful completion. Almost all the line of the Western or Erie Canal, from the Tonawanda creek which flows into lake Erie, to Hudson's River, is under contract. The section from the Seneca to the Genesee river comprehending a distance of sixty-three miles, is nearly in a navigable state, and the whole of it would have been finished the last

season, had it not been for the sickness which interrupted the progress of the workmen in the Seneca marshes, and the necessity of affording time for the consolidation of the great embankments at the Irondequoit. Upwards of twenty-seven miles of the eastern division from Utica to the Little Falls, has already been navigated, and great progress has been made towards the completion of those parts of the canal that lie west of the Genesee river and east of the Little Falls. The Northern or Champlain canal is also in a state of rapid advancement: So that upon a full and comprehensive view of the whole operation, we may confidently pronounce, that before the termination of the year 1823, there will be a complete and uninterrupted navigation from the navigable waters of the Hudson River to lakes Erie and Champlain, comprehending an extent of upwards of 425 miles, and all of which will be accomplished since the 4th day of July, 1817. Considerable difficulties and embarrassments have been encountered with respect to the most proper designations for the commencement and termination of the western canal; and in some intervening places there has been a great diversity of views with regard to the most eligible routes. The canal board have, I trust, never been led astray by local considerations and ephemeral expedients, and will, I hope, be enabled, notwithstanding the embarrassment which must necessarily arise from conflicting opinions and clashing interests, to combine the accommodation of flourishing villages and cities with the promotion of the general convenience and welfare.[4]

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4 By chap. 40, passed February 28, the canal commissioners were required to provide for draining the marsh lands in the town of Salina, and to lower Onondaga Lake to the level of Seneca River, "to afford a good boat navigation between said lake and river."

Chap. 251, passed April 17, contained provisions relative to the harbors at Black Rock and Buffalo Creek, which were to be constructed under the supervision of the canal commissioners.

During the last autumn the solidity of our works have been brought to the test by heavy rains and uncommon floods in the streams and rivers connected with the canals, and the general result has corresponded with our wishes, and has fortified our confidence.

I am happy to perceive the continuance of contemporaneous efforts on the part of two of the western states to initiate and create an artificial navigation between the river Illinois and lake Michigan, and also between the Ohio river and lake Erie. Whenever either of these projects is executed, there will exist on the completion of the western canal, a water communication as well on the side of the great lakes, as of the Atlantic ocean, between the Hudson and the Mississippi, between New York and New Orleans, and the vast and populous regions connected with them. Considering that the patriotic states which contemplate these important works, are, comparatively speaking, in the infancy of their settlement, and have to struggle with the embarrassments which must necessarily arise from the peculiarity of their position, and taking into view the benefits which must result to the nation at large from the completion of these communications, it is right and proper that the national government should dispense its munificent aid, and I do not hesitate to recommend a favorable expression of the sense of the legislature on this subject. Claiming no assistance in the prosecution of our own operations, we can with the more force advocate the just views and promote the laudable objects of our sister states.

It is certainly expedient for the legislature on all great occasions, but especially in relation to future internal im-

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Chap. 263, passed April 17, authorized the canal commissioners to make the Champlain canal feeder navigable, provided it could be done for $15,000 in addition to the expense of constructing the feeder.

By chap. 274, passed April 17, no boat, craft, floating timber or lumber was permitted to move on the Erie and Champlain canals faster than four miles an hour, without the written permission of the canal commissioners.

provements, to cherish a prospective spirit, and to provide in season for the exigencies of future times. The creation of a general board for public improvements, to commence its operations after the completion of the present undertakings, would be a wise and patriotic arrangement. This board, selected from our most enlightened and public spirited fellow citizens, and invested with power to establish and facilitate all useful channels of communication, and all eligible modes of improvement, would be enabled by a judicious application of the public resources to conduct us to an elevation of unparalleled prosperity.

From June, 1817, to October, 1821, inclusive, 2,893,500 dollars have been borrowed for making the canal, and the lenders have advanced to the state $91,202.50 in premiums, for the benefit arising from these investments of capital. Of the aggregate borrowed, 1,400,000 dollars were obtained at an interest of five per cent., and the remainder at six per cent.; and 1,070,000 dollars have been received by the acting canal commissioners from the first day of January to the 14th December last. The yearly interest of all the canal loans amounts to $159,580.

The commissioners of the canal fund were authorized to borrow in 1821 and 1822, a sum which with the existing revenues will amount to $1,600,000 each year; provided, however, that the interest on the whole sum borrowed shall not exceed the income of the canal fund for the time being. Under this power, $1,400,000 were borrowed in the year ending the 30th November last. The canal fund is at present estimated to produce $200,000 annually. It has actually produced to the 30th November, including $2,200 received for tolls, $167,767.23, to which if we add the commutation for the steamboat tax paid the 24th of December, the amount will be $172,767.23, independently of other tolls during the year, the aggregate of which is unknown, and exclusive also of the duties on salt for the quarter ending in November, which have not yet been received at the treas-

ury. The avails from these sources, added to the before mentioned sum of $172,767.23, will probably make the income of the canal fund amount at least to $200,000. This sum, though more than adequate to pay the annual interest on the existing debt, will not be sufficient to authorize the commissioners of the canal fund to borrow the additional sum of $1,400,000 for the next season; and it is therefore requisite that further legislative provision be made for that purpose, especially as it is impossible to estimate with any precision the income for toll during the present year.

The annual surplus of the canal fund after paying the interest of the debt now existing and to be hereafter incurred on that account, ought to be appropriated to the extinguishment of the principal; and as this excess will increase with the progress of time, the accumulation of population, the augmentation of wealth, and the extension of inland trade, there cannot be a doubt not only as to the rapid discharge of the debt, but as to the creation of an immense revenue, applicable to all the purposes of beneficial improvement, and all the objects of good government.

The public debt, besides the canal debt, consists of the stock debt created by the act to improve the funds, passed 21st April, 1818, which amounts to..... $1,000,000
Debt due the Bank of New York..... 280,000

$1,280,000

For which a yearly interest of $76,800 is paid.

The general fund of the state exclusive of the common school fund, the canal fund, the literature fund, and the Lewiston school fund, amounts to $3,077,856.98, principally in bank stock and bonds and mortgages.

The revenue for the year is estimated at $469,928.91, which with $43,463.53, the balance in the treasury on the first of December, will make $513,392.44, and as the expenses of government and other ordinary demands will

not exceed $379,800, there will remain the sum of $133,592.44 to meet extraordinary appropriations for the current year and especially payment in part of the debt due to the Bank of New York. Independently of this general fund the state owns near a million acres of land.

The common school fund consists of $1,139,130.57, and twenty-five thousand acres of land. It yields annually $77,417.86.

The literature fund amounts to $99,535.82, which produces an income of $5,142.43. It has also 2,856 acres of land.

The Lewiston school fund is $3,757.35, the annual produce of which is $212.74, a few lots of land are also invested in this fund.

The productive income of the canal fund arises from auction duties, duties on salt, canal tolls, and $5,000 as a commutation for a tax on steamboat passengers.

The unproductive canal fund consists of Grand Island in the Niagara River; valuable lands bordering on the Onondaga salt springs, and 104,632 acres which have been given by companies or individuals. And there is also a contingent canal fund composed of the proceeds of lotteries to be drawn after the sums granted by the present lotteries are paid, and of a tax of $250,000 on lands adjoining the canal, the collection of which is suspended.

This general view of the funds and resources of the commonwealth, is, I trust, calculated to encourage us in our career of useful improvement, and to elicit further manifestations of the public munificence on all proper occasions.

The excellent direction which has been given to the public bounty in appropriations for common schools, academies and colleges is very perceptible in the multiplication of our seminaries of education, in the increase of the number of students and in the acquisition of able and skilful teachers.

The Lancasterian or monitorial system, or as it has been emphatically denominated, the system of mutual instruction, is making its way in the community by the force of its transcendent merits. Our common schools have flourished beyond all former example; and our higher institutions, the seats of literature and science, continue to maintain the respectable character which they have so honorably acquired. Having in the course of the last year had an opportunity from personal observation to witness the progress of Columbia College, I cannot omit, on this occasion, to express the high sense which I entertain of the able superintendence of the trustees, of the learning and attention of the president and professors, and of the laudable advances of the students; and my intelligence from the other colleges is also propitious to the progress of knowledge, and honorable to those venerable and distinguished men who watch over their interests.

Our medical establishments are also in a condition uncommonly prosperous.

I am happy to have it in my power to say that this state has always evinced a liberal spirit in the promotion of education, and I am persuaded that no considerations short of total inability will ever prevent similar demonstrations. The first duty of a state is to render its citizens virtuous by intellectual instruction and moral discipline, by enlightening their minds, purifying their hearts, and teaching them their rights and their obligations. Those solid and enduring honors which arise from the cultivation of science and the acquisition and diffusion of knowledge, will out-live the renown of the statesman and the glory of the warrior; and if any stimulus were wanting in a case so worthy of all our attention and patronage, we may find it in the example before our eyes, of the author of the Declaration of Independence, who has devoted the evening of his illustrious life to the establishment of an university in his native state.

As connected with this subject, I shall lay before you the proceedings of several legislatures, relative to the appropriation of a small portion of the national domain to the purposes of education. It is stated that in eleven new states and territories, the general government has appropriated one thirty-sixth part of the public lands for common schools, and one fifth part of that thirty-sixth part for colleges and academies. And, while it is admitted that this disposition is in all respects proper and laudable, it is contended that the other members of the confederacy are entitled to a correspondent benefit out of the same common fund. This claim appears to be sustained by the most conclusive reasoning, and it is believed to be impossible for congress to resist an application so just and beneficial. If, however, this measure were calculated to embarrass the financial arrangements of the national government, to make a serious inroad on the national domain, or to disparage the interests of the states which have already been benefitted, I should be entirely unwilling to press it. Whatever ratio of distribution may be adopted, the quantum of population, or the extent of territory of each state, the deduction from the landed estate of the empire would be so small as scarcely to be felt. In either case it would not exceed ten millions out of four hundred millions of acres owned by the United States. It is our duty to co-operate in obtaining justice for our sister states as well as for ourselves. If we were willing to waive the benefit which might be derived from the success of this application, it would furnish no just ground of hostility to the claim in general, and indeed in such case it would entirely correspond with the dictates of magnanimity to advocate it with all our might and influence. This state, on the basis of appropriation, originally adopted, would be entitled to 800,000 acres for our common schools, and 160,000 for our colleges and academies, which with proper management,

and in connection with existing funds would answer all the requisitions of education.

While the pacific state in general of the civilized world is a subject of sincere congratulation, we ought not to deceive ourselves with the chimerical expectation that we are to witness the continued absence of those awful calamities which have afflicted the human race. After long and severe struggles, unprecedented in the annals of mankind, a general peace became necessary. War is now in a very considerable degree a question of finance. And if the powers of Europe have stayed the hand of desolation in order to recover their exhausted strength, and to remove their fiscal embarrassments we may be assured that a re-establishment of the resources will produce a revival of the ravages of war. The extension of our territory from the Atlantic to the Pacific ocean has increased our points of contact and consequently of collision with foreign nations: And it is well known that it requires time as well as magnanimity to overcome prejudices and hostilities engendered and exasperated by competitions for the emoluments of trade, and antipathies in the fundamental principles of government. I took the liberty, on a former and similar occasion, to solicit the attention of the legislature to a revision and consolidation of our militia laws, and I now consider it my duty to reiterate this request. A statute was passed on the 21st of April, 1818, entitled "an act to organize the militia of the state of New York," and embodying all the provisions on this subject into one act. But by two subsequent statutes, passed on the 13th of April, 1819, and the 31st of March, 1821, our military code has been so obscured that it is questionable whether parades and courts martial are authorized in certain situations. Respectable members of the legal profession have taken different views of this subject, and appeals are now pending before the commander-in-chief. Some definite and uniform rule with respect to the employment of counsel before courts martial would

prevent considerable embarrassment; many other provisions may be beneficially adopted, and one statute, embracing our whole military code, well digested, methodically arranged, and clearly expressed, would remove much perplexity and add greatly to the usefulness and respectability of the militia.[5]

In order to render the militia effective in cases of emergency it is expedient to provide them with the munitions of war. There is not a sufficient number of artillery pieces for the accommodation of the different artillery companies, and frequent requisitions are made on the commissary general for the purpose, which he is not able to answer. Provision for equipping the ordnance in hand, and the completion of an arrangement with the national government for a partial supply, may in some measure mitigate the present inconvenience. At all events, it is advisable to render the officers of artillery liable for the safe keeping of the pieces intrusted to their care.

Our arsenals do not contain more than thirty thousand stand of arms, for the supply of one hundred and twenty thousand infantry. Pistols and swords are wanted for our cavalry, and cannon for our artillery; and at the present time all the implements of war can be procured on the most reasonable terms.

I avail myself of this occasion to recommend to your favorable notice a memorial from the municipal authorities of the city of Washington, respecting their public improvements; and I am confident that you will always evince a disposition to promote the prosperity of a city founded by the illustrious father of our country, and established as the permanent seat of the national government.[6]

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[5] A revised militia law was passed at the next session, 1823, chap. 244.

[6] See *post*, p. 1128, for memorial from the municipal authorities of Washington, relative to the promotion of a lottery for the purpose of raising funds to aid in making certain public improvements.

By the 27th article of the treaty of amity, commerce and navigation between the United States and Great Britain, made in 1794, it was agreed "to deliver up to justice on mutual requisitions, all persons who being charged with murder or forgery committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other, provided that this shall only be done on such evidence of criminality as, according to the laws of the place where the fugitive or person so charged, shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed." But this treaty being no longer in force, and no conventional provision having been subsequently made on the subject, it has been questioned whether the national or state authorities are authorized by the laws of the land, or obligated by the law of nations, to surrender, in any case, fugitives from justice from foreign countries. A case has recently occurred, which induces me to solicit your attention to this subject.

A certain Jacob Smith, alias Jacob S. Redington, perpetrated, some time last year, in the city of New York, the crime of forgery, by altering a set of bills of exchange drawn by the bank of Montreal on a commercial house in London, and after having sold the bills in New York, he took refuge in Canada. Considering the aggravated nature of this offence, and the peculiar circumstances under which it was committed, I thought it expedient to apply to the Earl of Dalhousie, Governor of Canada, for his official interposition; and after consulting the legal authorities of the province, he ordered the offender to be delivered up to an agent appointed by me for the purpose of receiving and conveying him to the city of New York for trial. As policy enjoins, so comity requires a reciprocation of the same friendly and liberal offices whenever it shall become necessary. The papers in this case will be laid before you; and adequate general provisions on the subject will have

a salutary tendency in preventing and punishing crimes and in expelling from our territory malefactors who resort to it from other countries, in expectation of impunity.[7]

On the 23d of February, 1818, I submitted to the legislature a communication from the state of New Jersey, relative to the settlement of the controverted eastern boundary line of that state. It proposed the appointment of commissioners, with authority to make a case containing all the facts relative to our respective claims of jurisdiction wherever they may interfere, to the end that the same might be submitted to the consideration and final decision of the supreme court of the United States. Although this overture was dictated by a spirit of amity, and was entitled to and received the most respectful attention, yet it was not deemed expedient by the legislature to accede to it. In the meantime, the non-adjustment of the difference has been productive of feelings of irritation, which ought not to be entertained by sister and neighboring states, and measures have been pursued in relation to our exclusive grant of steamboat navigation, which are complained of as bearing hard on the rights and interests of some of our citizens. Let me call your attention once more to this subject, and express a hope that speedy and effectual measures may be adopted for a final adjustment; which, I trust, may be accomplished without compromising the honor, or sacrificing the interests of either of the states.

The final settlement of the claims of this state against the United States has been procrastinated by the intrinsic embarrassments of the case, by the difficulties connected with the obtainment of vouchers, and by unavoidable delays attending an adjustment with the accounting officers, of claims so various, complex and extended; and I find that some other states, having similar demands, have encoun-

[7] Chap. 148, passed April 5, 1822, authorized the Governor to surrender to any government or its ministers or officers, persons accused of specified crimes, and the act regulated the procedure in such cases.

tered the same inconvenience. I have however instructed the agent of the state to complete this business immediately, and, in the course of a short time, I hope to communicate to you a detailed and satisfactory report on the subject.

It is perhaps not an extravagant estimate to say, that this state has surrendered the benefit of property escheated by alienage to the amount of three millions of dollars; and it is certainly proper to mention, that this munificent spirit has not been reciprocated by foreign nations. I submit this subject to you without any other remark than merely to suggest the propriety of protecting the *bona fide* purchases of our own citizens when we make such liberal provision for the benefit of aliens.

Grand Island, a very valuable tract of land in the Niagara River, has been appropriated for the benefit of the canal fund. By virtue of a statute passed for that purpose, I caused the expulsion from that island of a considerable body of intruders, and since that event a number have renewed the aggression to the great injury of the state, and in defiance of its authority. As it is questionable whether the power granted to the executive by the act is not spent, it may be advisable for you to take this subject into consideration.

The statute passed at the last session, prescribing the use of oaths in certain cases, as unnecessary and unfavorable to the morals and good order of society, has been very satisfactory to those meritorious citizens who believe that oaths are repugnant to the injunctions of our holy religion; and as there appears to be a general opinion in favor of the expediency of the measure, it is to be hoped that on all future occasions we will not lose sight of a principle recommended to our countenance by such impressive considerations.

While it is highly proper that adequate measures should be adopted for the destruction of noxious wild animals,

yet it by no means follows that extravagant rewards should be drawn from the public treasury, and undue burthens imposed on landed property for that purpose. Independently of local premiums, there has been paid by the state for the six last years (as will appear from a statement herewith submitted) $13,985 for the destruction of wolves in Franklin county, while during that period $5,810.77 only have been received in taxes from that county, and the state has paid besides $32,585.25 for the arrears of non-resident taxes.[8]

The condition of the Indian tribes in this country demands our sympathy and assistance. Rapidly diminishing before the progress of our settlements, and feeling the impossibility of pursuing their favorite employments in the vicinity of civilization, several of their leading men have for a long time contemplated a removal to more distant and sequestered regions, where their existence as a people may be prolonged; and on the 18th day of August last, a treaty was made at Green Bay, in the territory of Michigan, between certain deputies of the Oneida, Onondaga, Seneca, St. Regis, Stockbridge and Munsee nations, residing in this state, and the head men and chiefs of the Menomini and Wennebago nations of Indians, for the purchase of an extensive territory in that quarter. Whether the arrangement will receive the approbation of the general government, or the ratification of our Indian tribes, I am not at present advised; but whatever may be the result, whether they remain or depart, I trust that this remnant of our red population will always experience our liberality and protection. A copy of this treaty will be communicated for your information.

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[8] A general act relative to the payment of bounties for the destruction of wolves, chap. 26, was passed February 9, under which one-half of the bounty was to be paid by the county, and one-half by the state. Another act, chap. 126, passed March 29, made additional provisions relative to Franklin county, limiting the amount which might be paid by the state to that county in any year.

The state of our criminal jurisprudence is at all times worthy of your attention. We are now trying whether punishments comparatively mild may not operate efficaciously on society by preventing crimes, and on criminals by producing reformation. In considering and prosecuting the latter object, in a spirit of benevolence, and with commendable attention and anxiety, we have perhaps not always sufficiently estimated the superior importance of the former. The end of punishment is the prevention of crime, by the infliction of pain and the operation of fear; and if, in exercising this salutary influence on society, it can at the same time restore the guilty to virtue, it will be entitled to additional credit. Our present system may be improved in a moral classification of offenders, in the adoption of solitary imprisonment, in the establishment of a diet adapted to the nature of the offence, and the character of the criminal, and in a division of prisons, appropriating one for the reception of minor offenders, and the purposes of productive labor and personal reformation; and the other to severe and inexorable punishment, where society should not afford its comforts, nor labor its employments, and where the pardoning power should never reach.[9]

A proper arrangement of diet is an idea too familiar to require illustration; but it may not have occurred to you

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[9] By chap. 273, passed April 17, the Governor was authorized to direct the transfer of life prisoners from Auburn to New York, and the act contained a provision that "whenever there shall be ten or more such prisoners at Auburn, the keeper shall cause them to be sufficiently chained, two or more being always chained together, and conducted on foot, if able to walk, or to be transported by water." The same act authorized the Governor to direct the transfer of prisoners sentenced for a term less than for life from New York to Auburn, under the same regulations as to the method of transportation.

Chap. 206, passed April 12, provided that a pardon of a person under sentence of imprisonment for life should not have the effect to "restore such a person to the rights of any previous matrimonial contract, or to the guardianship of the children the issue of such matrimonial contract."

This part of the Governor's message was considered by a Senate committee, which presented a long report on the subject on the 5th of March, but there was no general legislation embodying the Governor's suggestions.

that a scale of punishments may be established under the general head of solitary confinement. The most severe infliction would be entire solitude in darkness, without employment, and the only food bread and water; the next would be total seclusion, without employment, in light, and with the same means of subsistence. Again, the same with employment; then solitary confinement with improved food; and finally, solitary seclusion occasionally. The adoption of this plan may supersede the necessity of protracted confinement.

It is certainly advisable to direct your view at our criminal code in general, and to remedy some of its glaring defects. In the infliction of punishment there is too great a latitude allowed to judicial discretion. Some offenders are punishable with imprisonment in the state prison for life, or some shorter period in the discretion of the court, or some shorter period not less than seven years; while others are liable to be imprisoned for terms not exceeding fourteen, ten, seven, five and three years. There are fifty-two courts of general sessions in the state, besides courts of special sessions, which last have cognizance of petty offences; and courts of oyer and terminer are held in each county. The measure of punishment is too often regulated by the personal character of the judge, or by adventitious circumstances not inherent in the crime; in some cases too mild, in other cases too severe; and frequently requiring the correcting interposition of the executive where it can be applied. Again, imprisonment for life is enjoined in all convictions of burglary, or feloniously breaking into or taking any goods or chattels from any dwelling house, any person being therein, and put in fear; or robbing any person in any place whatever. It is well known that these offences are in many instances merely technical, attended with no aggravated circumstances, and not worse in character or consequences than ordinary grand larcenies. For counterfeiting metallic money, the offender is doomed to

the state prison for life; for counterfeiting paper money, or in other words, bank notes, he may be sentenced for a shorter period. Several felonies are merely constructive, and do not require severe punishment, and yet no discrimination is made.

The canal commissioners have, in pursuance of the powers vested in them by law, authorized the employment of some convicts in operations connected with the western canal; but the experiment has not answered any useful purpose. And as this provision is not required by the public exigencies, and may have a tendency to disparage the exertions of honest and meritorious industry, I would recommend the repeal of the statute. [See note 9.]

Having already occupied a considerable portion of your time, I shall no longer detain you from your important functions, but shall reserve for future communication some subjects that may merit your consideration. And whatever diversity of opinion may exist, I am persuaded that we will all co-operate with a sincere and entire devotion to our solemn and momentous duties, in cherishing a spirit of conciliation and forbearance, and in cultivating that respect which we owe to each other and to ourselves.

DE WITT CLINTON.

Albany, January 2, 1822.

SPECIAL MESSAGES.

January 2. To the Senate:

Objections by the Council of Revision to a bill passed at the last session "in addition to an act relative to the common lands of the freeholders and inhabitants of Harlaem, passed March 28, 1820."

"Because, by the act to which the bill is an amendment, the trustees therein named were authorized to sell the said common lands, and to execute conveyances therefor, and

after deducting their expenses with five per cent. commissions, and after paying the assessments on said lands, and reimbursing the freeholders and inhabitants, they were required to pay, out of the residue of the monies, certain specific sums, to the trustees of Harlaem library; to the trustees of the Hamilton school; to the trustees of such schools as may be established in the village of Harlaem, and the village of Manhattanville; and to the trustees of such school as may be established on the said common lands. The surplus monies in the hands of the trustees, after payment of these appropriations, were directed, by the said act, to be distributed by them among the several religious congregations of the said freeholders and inhabitants, in proportion to the number of church members in each; the respective proportions to be paid to their respective trustees, to be placed out at interest, and the yearly interest to be applied to the benefit of their respective religious establishments.

The bill provides, that in addition to the specific appropriations of the monies arising from the sales of the said lands, mentioned in the act, the trustees shall be authorized to distribute and pay, as follows: the sum of five thousand dollars into the hands of the consistory of the reformed Low Dutch Church at Harlaem, to be invested by them in stock, or bond and mortgage, and the yearly interest thereof to be applied to the support of the gospel in said place; the sum of one thousand dollars to the first episcopal church to be erected within the bounds of the township of Harlaem; and the sum of one thousand dollars to be paid to, and equally divided between the respective trustees of the other religious congregations within the bounds of the said township of Harlaem. The said last mentioned appropriations being, by the bill, declared to be in lieu and stead of the surplus mentioned in the third section of said act; and that, if the proceeds of the land shall be insufficient to pay off all the appropria-

tions made by the bill, a rateable deduction is directed to be made; and if there shall be a surplus beyond the appropriations, then a rateable addition is to be made to each appropriation.

The bill thus entirely alters and changes the distribution of the surplus monies provided by the act, to the manifest prejudice of some portion of the inhabitants and freeholders of Harlaem. The bill contains no evidence, by recital or otherwise, either that the freeholders and inhabitants of Harlaem have assented to its enactment, or that they have had any notice of the intended application to the legislature, to modify or change the provisions of the existing act.

A petition has been presented to the legislature, purporting to be signed by the said trustees, and to which certain of the freeholders and inhabitants of Harlaem have signified their assent, for the enactment of a law, similar in its provisions to the present bill; but it does not appear by that petition, that the freeholders and inhabitants of Harlaem have assented to the prayer of the petition, nor does the petition represent the fact to be so.

The act to which the bill is an amendment, shows evidently, from its recitals, that it was passed conformably to the general sense and wishes of the freeholders and inhabitants of Harlaem. To subvert and destroy the provisions of an act thus passed, upon the application of a portion of the freeholders and inhabitants of Harlaem, in conjunction with the trustees, appears to the council to be unconstitutional, inasmuch as it impairs and destroys the obligation of a contract created by the act,[a] and inasmuch as it violates a solemn compact, under which vested rights have been acquired, and is of dangerous tendency."

The bill was not passed over the veto.

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[a] U. S. Const. art. 1, § 10, clause 1.

January 3. To the Senate: Transmitting a communication from John M. Canfield, Superintendent of Light Houses on Lake Ontario, requesting the cession of about three acres of land at the mouth of the Genesee River on the west side thereof, for lighthouse purposes. The communication stated that the United States had been unable to acquire title to the parcel on the east side ceded by the act of November 20, 1820 [see *ante*, p. 1055, note 11], and that the government had therefore acquired title to a parcel on the west side of the river.[10]

January 5. To the Assembly:

"GENTLEMEN.— With this message, you will receive the Annual Report of the Inspector General of Staves and Heading; and also an interesting communication from Robert Snow, one of the inspectors, on the inspection of pot and pearl ashes. [See note 3.]

By the act, entitled, 'an act for the repacking and inspection of beef and pork,' it is enjoined on the inspectors, to report to the executive, in the month of June, in every year, the whole number of barrels and half barrels of beef and pork, inspected by them, the preceding year.

I now transmit to you, all the returns which have been made to me, on this subject, for the last year, by which it will appear, that most of the inspectors have omitted to perform this duty; which is the more to be regretted, as complete reports might have furnished information of great importance in estimating the resources of the state.

DE WITT CLINTON."

Albany, 5 January, 1822.

January 7. To the Assembly: Transmitting a communication from R. Whiley, a former army officer, offering to furnish arms for the use of the State on satisfactory terms.

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10 Chap. 4, passed February 4, amended the Genesee River light-house act of 1820, by ceding the land requested on the west side of the river in lieu of that ceded by the original act.

January 15. To the Senate:

"GENTLEMEN.—I have the honor to lay before you an application of the American Antiquarian Society. Similar applications have been successfully made to the government of the United States, and I trust that this state will not exhibit, on this occurrence, an indisposition to encourage a very laudable and respectable institution, founded for the purpose of illustrating the antiquities and history of America.[11]

DE WITT CLINTON."

Albany, January 14, 1822.

January 15. To the Assembly: Transmitting the annual report of the commissary general.

January 16. To the Assembly: Transmitting a resolution adopted by the legislature of Kentucky approving in substance the Maryland proposition for a distribution of the public lands among the states for educational purposes.

The resolution was based upon a report by a legislative committee in which it was said that "all the states and territories, whose waters fall into the Mississippi have been amply provided for by the laws of Congress relating to the survey and sale of the public lands, except the State of Kentucky."

January 17. To the Assembly: Transmitting a communication from the Commissary General, recommending an appropriation sufficient to mount and equip ten iron six pounders purchased in 1818;[12] stating that a street was

[11] The application was for one copy of the laws, public documents and judicial decisions of the State. A Senate committee recommended legislation for the purpose of complying with the request of the Antiquarian Society, but the bill was not passed.

[12] An Assembly committee recommended that the commissary-general try to procure from the federal authorities carriages and equipments for field pieces, as he might deem proper, and that the value thereof be credited on the state's claim against the United States, but there was no legislation on the subject.

about to be opened through the arsenal lot in the city of New York, which would require additional expenditures to meet new conditions caused by such change in the lot,[13] informing the Governor that it was impracticable to provide for the care of the ten state arsenals with only four keepers, allowed by law, and recommending the appointment of one keeper for each arsenal.[14]

January 21. To the Assembly: Transmitting the annual report of the superintendent of the Brothertown and New Stockbridge Indians.

January 22. To the Assembly:

"Gentlemen.—The Dutch records, in the Secretary's office, commence in 1638, and continue to 1664, in which last year the whole of New Netherlands became subject to England. In 1673, the Dutch re-conquered this country and continued in possession, under the government of Anthony Colve, until its surrender to England, by a treaty of peace, made on the 9th of February, 1674, during which short period, there were some proceedings had in the Dutch language, and which also remain on record, in the Secretary's office.

In 1804, a law was passed, directing the translations of these records; but no efficient measure was adopted for the accomplishment of this object, until the 7th of February, 1818, when Francis Adrian Vanderheuf, Esq. a gentleman of eminent learning and talents, and distinguished worth, entered upon the office of translator, in pursuance of directions given by me for that purpose; since which time, he has with indefatigable industry, and great ability, proceeded so far in his important undertaking, as to deposit, in

[13] Chap. 260 made an appropriation for the expenses to be incurred in consequence of the proposed opening of White street through the New York arsenal lot.

[14] The suggestion that the number of arsenal keepers be increased was not adopted, but chap. 260 made an appropriation for the repair of the arsenals.

the Secretary's office, seventeen volumes of translations, in folio, containing much valuable information, and illustrating an interesting period of our colonial history, hitherto, in a great degree, closed against us. The remainder of the translations will probably be finished during the present year, and will be contained in three or four additional volumes.

As no provision was made for the purpose, in the act of 1804, I take the liberty of recommending that an index may be authorized for those translations, without which much of their usefulness will be lost. And I avail myself of this occasion, to render justice to the arduous and important services of Mr. Vanderheuf, who has, among all the difficulties involved in deciphering, explaining, and translating ancient and mouldering manuscripts, successfully performed a work, which perhaps no other man, in this country, was capable of accomplishing.[15]

DE WITT CLINTON."

Albany, 22d January, 1822.

January 24. To the Assembly: Transmitting a communication from the New Stockbridge Indians. The journal does not contain the communication.[16]

January 26. To the Assembly: Transmitting communications offering to furnish cannon and military equipments for the use of the state.

January 31. To the Assembly: Transmitting a communication from the joint library committee of Congress requesting that copies of the laws of this state, together with

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[15] By chap. 127, passed March 29, the clerks of the Senate and Assembly were required to make the indexes to the volumes of translations of the Dutch records.

[16] By chap. 67, passed March 15, the Governor was authorized to direct the advance to the Stockbridge Indians of the annuity payable to them, for the purpose of aiding them in acquiring title to lands included in the Green Bay treaty referred to in the Governor's opening speech.

such new editions and digests of the same as may be published from time to time be furnished to the Congressional Library.

February 4. To the Assembly: Transmitting the resignation of Erastus Root as one of the commissioners appointed to select a site for a court house in Niagara County. The communication from Mr. Root stated that one of the commissioners had died, and that the remaining commissioners were unable to agree on the site.[17]

February 5. To the Assembly: Transmitting a communication relative to a supply of ordnance.

February 5. To the Assembly: Transmitting the resignation of Jesse Hawley as one of the commissioners to select a site for a court house in the county of Niagara. [See note 17.]

February 6. To the Assembly: Transmitting a long report adopted by the Ohio legislature relative to the Maryland proposition for the distribution of public lands for educational purposes, closing with the following resolutions:

"*Resolved* by the General Assembly of the state of Ohio, That the claim advanced in the report and resolutions of the General Assembly of Maryland, to an appropriation of public lands, in favor of the original states, and also Kentucky, for the support of schools, upon the assumed ground, that donations of school lands have been made in favor of the new states, (Kentucky excepted) is ill-founded and therefore unjust.

Resolved, That should any appropriation of public lands, or monies arising from the sale of lands, be made by congress, for the support of schools, or for other state purposes, those appropriations should be extended in just proportions to all the estates alike; and that in making such appropriations, justice and sound policy require that all vacant lands within the United States, at the close of

17 By chap. 64, passed March 15, new commissioners were appointed to locate a site for a court house and jail in Niagara county.

the revolutionary war, including those within the present limits of the original states, be taken into consideration.

Resolved, That this general assembly deem it inconsistent with the rights of state sovereignty, that one state should hold lands within the jurisdiction of another, without the consent of the states within whose limits such lands may be situated.

Resolved, That this general assembly would cheerfully concur in any appropriation of monies arising from the sale of public lands, for the encouragement of learning, which should be justified by sound policy, and be conformable to principles of justice and equality."

February 14. To the Senate: Transmitting a treaty made with the Onondaga Indians for the purchase of a tract of land.

February 15. To the Assembly: Transmitting a report and resolutions adopted by the legislature of Massachusetts concerning the controversy between the Bank of the United States and certain state officers of Ohio relative to a tax imposed by a law of that state. By these resolutions the Massachusetts legislature expressed the opinion that the power to establish a national bank with branches thereof in the several states, was vested by the Constitution in the Congress of the United States; that the act of Congress of April 10, 1816, incorporating the Bank of the United States was constitutional; that the Ohio legislation in question would expel the branch bank from the state and defeat the operation of the law therein; that the federal judiciary had power to determine a question involving a conflict of laws between the United States and a State; and that the pending action in the United States court did not violate the eleventh amendment. The resolutions also declared:

"The constitutional exercise and preservation of the judicial power of the United States, is essential to the safety and prosperity of the Union; and that while this legislature will be ever ready to afford its aid to any state,

against manifest usurpation or real encroachments upon its rights, it will also yield a reasonable confidence and support to all the departments of the national government, so long as they continue in the rightful exercise of their constitutional powers."

February 18. To the Assembly: Transmitting a report and resolutions adopted by the Massachusetts legislature relative to the Maryland proposition for the distribution of public lands for educational purposes. The following are the resolutions:

"*Resolved*, That the public lands of the United States, are justly considered to be the common property of the Union, and that no state can justly claim any exclusive appropriation of them.

Resolved, That the reservation of certain lots of land, in townships offered for sale by the United States, for the support of schools in such townships, in pursuance of standing laws, cannot justly be considered as a donation to the states within which such lands are situated and cannot, therefore, entitle any other state to demand any land or other donation by way of equivalent."

February 25. To the Senate: Transmitting the report of the trustees of the Bank of Savings in the City of New York.

February 26. To the Senate: Transmitting a copy of a treaty with the Stockbridge Indians.[18]

February 26. To the Assembly: Transmitting a communication from Chief Justice Ambrose Spencer on behalf of himself and the other judges relative to the jurisdiction of the supreme court over crimes committed by Indians against Indians on Indian reservations, stating that the Seneca nation, on whose reservation the specific crime mentioned in the communication was committed, claimed

[18] Chap. 73, passed March 22, confirmed the Stockbridge treaty, and directed the conveyance of land by the commissioners of the land office to John Gregg and John Hadcock according to the terms of the treaty.

exclusive jurisdiction in such cases, and suggesting legislation declaring the jurisdiction of the supreme court over all crimes committed in any part of the state.[19]

February 27. To the Senate: Transmitting papers relative to the purchase of a small tract of land from the New Stockbridge Indians in consequence of the act for the relief of Harvey Durkee.

February 27. To the Senate: Transmitting a communication from the surveyor general relative to a claim by Jacob Konkapot a Stockbridge Indian, growing out of a sale of land under a recent treaty with that tribe, and recommending legislation for his relief.

February 28. To the Assembly: Transmitting the annual report of the Governors of the New York Hospital.

February 28. To the Assembly: Transmitting the annual report of the inspector of flour and meal for the counties of New York and Kings.

March 5. To the Assembly:

"GENTLEMEN.—I have the honor to lay before you an application from an infantry company, in Steuben county, for the use of arms from the public arsenals; not having any authority to comply with the request, and being frequently applied to in similar cases, I have thought proper to lay this application before the legislature, and it will remain for them to determine, whether, under extraordinary circumstances like those of the applicants, it

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19 Soo-non-gize, otherwise called Tommy Jemmy, was pardoned by chap. 204, passed April 12.

The same act asserted the jurisdiction of the state courts in criminal cases as follows:

"That the sole and exclusive jurisdiction, of trying and punishing all and every person, of whatsoever nation or tribe, for crimes and offences committed within any part of this state, except only such crimes and offences as are or may be cognizable in courts deriving jurisdiction under the constitution and laws of the United States, of right belongs to, and is exclusively vested in the courts of justice of this state, organized under the constitution and laws thereof."

will be expedient to extend an important accommodation to a meritorious description of our fellow citizens, laboring under all the difficulties connected with new settlements.[20]

De WITT CLINTON."

Albany, 5th March, 1822.

March 12. To the Assembly:

"Gentlemen.—I transmit to you a communication, by which it appears that doubts are entertained by the inspectors of the state prison, at Auburn, whether they are authorized to provide bibles for the convicts. Of the utility of the measure, there can be no doubt, and I therefore recommend that adequate authority be conferred.[21]

De WITT CLINTON."

Albany, 12th March, 1822.

March 13. To the Assembly:

"Gentlemen.—Carleton Island, which is attached by law to the town of Lyme, in the county of Jefferson, is in consequence of a misapprehension of the rights of the state, without the benefit of magistrates, or laws, and the public property in that quarter is exposed to depredation.[22] I therefore recommend this subject to your particular attention.

De WITT CLINTON."

Albany, 13th March, 1822.

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[20] The Assembly adopted a committee report in substance, declaring it inexpedient and inconsistent with the general policy of the state to furnish this militia company with arms from the arsenals, stating the general rule that members of the militia were expected to arm themselves.

[21] A provision contained in chap. 273, passed April 17, authorized the prison agent at Auburn to furnish bibles for prisoners confined in solitary cells.

[22] Chap. 260, directed the appointment of additional justices of the peace in the town of Lyme, Jefferson county, and they were required to reside on Carleton Island.

April 3. To the Assembly: Transmitting the annual report of the Adjutant General.

April 8. To the Legislature:

"GENTLEMEN.—Having ascertained, shortly after the close of the last session of the legislature, in a conference with the agent for settling the account of this state, against the United States, that there were large sums due to the state, which were either suspended or rejected by the accounting officers of the United States, and being of opinion that documents might be procured, which would realize to a further and considerable extent, our just claims, and which would greatly exceed any resulting expense, I directed him to obtain the necessary testimony, and to bring the concerns of his agency to a conclusion, in time for a special and detailed report to the legislature, during the present session; since which, I have reiterated my injunctions, and being in daily expectation of receiving the required report, I did not consider it necessary to be possessed, until then, of the information required by the Assembly; and it is, therefore, out of my power to comply any further with your request, except it be to state, that from the annexed extract of a letter from the agent, it is probable that a report will arrive in season to be communicated to you, before the adjournment of the legislature. His agency will, agreeably to the understanding between us, terminate of course with the present session, unless the legislature shall otherwise direct, or unless, in consultation with the comptroller, it shall appear necessary to continue it for a short period.

DE WITT CLINTON.

Albany, April 8, 1822.

April 17. The Legislature adjourned without day.

WASHINGTON LOTTERY MEMORIAL.

The following is the memorial referred to in the Governor's Message, *ante*, p. 1103.

"To the Senate and House of Representatives, of the State of New York.

"The memorial of the mayor, aldermen, and common council of the city of Washington, in the district of Columbia, respectfully represents:—

That, by the act of congress, of the 15th May, 1820, reviving and amending a preceding act, giving the same authority, the corporation of the said city is invested with power to authorize, with the approbation of the President of the United States, the drawing of lotteries for effecting important improvements in the city, which the ordinary revenue thereof will not accomplish, for the term of ten years; provided that the amount so authorized to be raised in each year, shall not exceed the sum of ten thousand dollars.

That in pursuance of this act, and of that of similar tenor, which was previously in existence, resolutions have been passed from time to time, with the approbation of the present and late Presidents of the United States, authorizing lotteries, for the purposes which the ordinary revenues of the city could not accomplish; such as the building of a City Hall, of Lancasterian schools, of a Penitentiary, &c.

That, just as these lotteries have been put into successful operation, it appears, that by prohibitory laws in some of the states in the union, and the apprehension of them in others, the purpose of the said lotteries, is in a great measure defeated, and the intentions of congress, in favor of this city, thus far frustrated.

Under these circumstances, the undersigned are emboldened to approach your honorable body, and, in behalf of their fellow citizens, to apply for your active interposition in their favor.

When it is considered, that little more than twenty years ago, the ground on which this city is laid out, was for the most part covered only with woods and impassible marsh, without inhabitants, save the occupants of one or two farms, the labor which has devolved on its first settlers,

may be conceived, but can hardly be realized by those who have not had the opportunity of personal observation. They were the pioneers of a population, which has now become respectable in numbers, but, employing all their earnings in earnest and unanimous endeavors to improve the city, and devoting to that object, all their savings, have rather impoverished than enriched themselves, by their choice of this city for a home.

The cities of the old world, and even those of the new, have had small beginnings, and have risen gradually, by the profits of trade and commerce, to their present numbers. Without such aid, but solely by the steady and persevering efforts of its inhabitants — efforts, multiplying as their number has increased, and all directed to the same object, this city has grown more rapidly than any other in this country. The only parallel to it, that we are acquainted with, even in history, is the city of Petersburg, in Russia. But, when the Czar Peter determined to transfer his seat of government from Moscow, to an uninhabited spot at the mouth of the Neva, he employed, in that object, three hundred thousand men, assisted by the wealth of his empire, and all the aids of despotic coercion: roads, bridges, and buildings, sprung up at the word of command. Between that city and the city of Washington, the contrast is, in this respect, yet more striking, than is the resemblance in others. The government of the union, did not even make a road to its embryo city, or open a passage through it; all was left to individual enterprise. The authority to raise money, by way of lottery, limited as before described, is the only direct aid, that the government has ever given to the city of Washington; and of that resource, we are now in danger of being deprived, by the legislation of the several states.

We beg leave to represent further, that the extensive plan of this city, though wisely devised for the purposes of futurity, subjects the present generation to enormous expenses, in making streets and avenues, as much for the accommodation of the people of the United States in general, members of congress, and others, as for those of this city. There are many other expenses necessarily incurred, burthensome to our people, in which the whole union is interested, not to speak of that interest, which all are supposed to feel in the respectability of the metropolis. Often

have we had to provide sustenance for the soldier of the revolution, or of the late war, who has travelled here from a distance, to seek for his real, or supposed rights, and has found a refuge from the inclemency of the season, only by the bounty of this corporation, extended frequently to numbers at a time. We mention not this to boast of it, but to illustrate the nature of the many drains on our limited resources, for the supply of wants, which are not our own.

Under the pressure of these accumulated burthens, and the necessity we are under of erecting bridges, markets, churches, &c. in numbers suited to the area we occupy, and to the future grandeur of our country, rather than to our numbers, we have it not in our power to provide for the erection of buildings suited to general purposes, and correspondent to the plan of the city, without extraneous aid. Our city hall, begun under the auspices of congress, and intended for the accommodation of the circuit court of the United States and of our city authorities, is checked in its progress, by the obstacles thrown in the way of our lotteries, which prevent us from deriving thence, the funds on which we had confidently relied for its completion.

Of the constitutional question which has been raised in regard to our lotteries, we do not undertake to judge; it is sufficient that it has been made, and decided in favor of the state prohibitory laws. In the particular case,* which was argued and decided before the supreme court, at its last term, this corporation was not in any manner a party; the scheme of the lottery having been disposed of by the corporation, before the question was raised. We have engaged in no controversy with the states; and seek now only to be placed, by their good will towards us, in the situation in which we should have stood, but for the state laws recently enforced against us. In asking this, we ask from the states no more than we have always rendered unto them. There never has been, nor is there now in force, in this city, or district, any law or ordinance, embarrassing the sale of tickets in lotteries authorized by any of the states of this union.

An impression, we understand, prevails in some quarters, that the government of the United States has expended on the public buildings in this city, a geat amount of the money collected from the people of the United

* See Cohen v. Virginia (1821), 6 Wheat. 264.

States. As this impression might be fatal to the object of this memorial, the undersigned take this occasion to state, that the money derived from the sale of lots ceded to the government, and from donations, added to the value of lots and reservations, not disposed of, amounts to at least double the sum of the money expended on all the public buildings in Washington, and to much more than will have been expended, when all the public buildings shall have been completed in the greatest extent ever contemplated. These buildings, it will be recollected, are all exclusively for the use of the United States; whilst those, which we are about to erect, are for the general use, as well as for the convenience of the city, receiving no aid from the congress or people of the United States, but such as we may hope to realize from lotteries, established under the authority of the act of congress.

Under these circumstances, appealing to the feelings which kindle in every breast, at the name of WASHINGTON, the founder of the city which we are struggling to make in some degree, worthy of his fame; relying on the equity of our claim to toleration, at least from those, who, as well as ourselves, are to enjoy the advantages of the indulgence we ask, we present ourselves with deference, before your honorable body, soliciting that you will be pleased to pass an act, authorizing the sale within the state of New York, of tickets in any lottery which has been, or may be auhorized for public purposes, in the city of Washington; or at least, considering the nature of the objects of these lotteries authorized by the laws of the state of New York. By the kindness of the legislatures of the several states, co-operating with the act of congress we shall have it in our power to complete important undertakings, commenced with full confidence under the sanction of the act of congress; whilst in that very act, is contained the limitation which guards from any possible abuse, the privilege which we now ask at your hands.

In behalf of the citizens of Washington.

SAM'L M. SMALLWOOD, Mayor.
U. WEIGHTMAN,
CH. W. GOLDSBOROUGH,
AND'W. HUNTER,
T. P. ANDREWS,
} Committee.

November 22, 1821.

The Washington lottery was considered during the debate on the lottery provision in the New York Constitutional Convention of 1821. That Convention adjourned on the 10th of November, 1821, twelve days before the date of the Washington memorial. The Constitution proposed by the Convention included a provision that "no lottery shall hereafter be authorized in this state; and the legislature shall pass laws to prevent the sale of all lottery tickets within this state, except in lotteries already provided for by law."

The Constitution was approved by the people at an election held in January, 1822, and went into effect on the last day of December of that year. The Legislature, acting on the constitutional prohibition, passed a stringent anti-lottery act, chap. 71, on the 15th of March, 1822, imposing severe penalties against the sale of lottery tickets, and providing for closing up lotteries already authorized.

An act of Congress passed in 1842, prohibited the sale of lottery tickets in the District of Columbia after January 1, 1843, except as to certain specified lotteries then in operation.

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